

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
APPENDIX**



76-1471

To be argued by  
JONATHAN J. SILBERMANN

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x  
UNITED STATES OF AMERICA, :  
Plaintiff-Appellee, :  
-against- :  
LARRY LOMBARDI, :  
Defendant-Appellant. :  
-----x

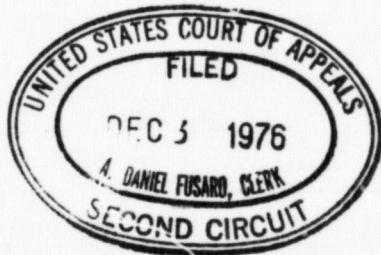
*B*  
*P95.*  
Docket No. 76-1471

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APPENDIX TO APPELLANT'S BRIEF

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
LARRY LOMBARDI  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

JONATHAN J. SILBERMANN,  
Of Counsel.

CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE BRONFANT

A  
75 CRIM. 614.

D. C. Form No. 100 Rev.

TITLE OF CASE

THE UNITED STATES

vs.

ATTORNEYS

For U. S.:

Thomas E. Engel AUSA

791-1929 1931

215

LARRY LOMBARDI-1,7,9,11,12,14-18

SAMMY CHOJ a/k/a Cho Kwok Chunng-1,8,10,13

CHEUNG KIN PING a/k/a Siao Moo Bee-1,6,19

LAI MONG WAH a/k/a Wah Je, Gloria, Big Sister-1-5&7

CHANG YU CHING-1,2,4

For Defendant:

CHEUNG KIN PING

ROSENTHAL & HERMAN

401 BWAY N.Y.C. 10013

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
(07)		5/3/76	73969	5- -	
J.S. 2 mailed	Clerk	5/5/76	Trans	5- -	
J.S. 3 mailed 431	Marshal				
Violation	Docket fee				
Title 21					
Sec. 846,812,841, (a)(1)(b), 173,174,951,952,843.					
Consp. to viol. Fed. narco. laws. (ct.1) Importation & distr. of heroin. (cts.2&3) Importation of heroin. (ct.4)			Use of communication facility to promote narcotics consp. (ct.19)		
str. & possess. of heroin.I. (cts.5-18)			(Nineteen Counts)		

DATE	PROCEEDINGS
6-23-75	Filed indictment and ordered sealed. B/W ordered. Knapp, J. B/W issued.
7-3-75	Indictment ordered unsealed. Carter, J.
7-3-75	Defts PING and WAH plead NOT GUILTY.
8-1-75	Adjourned to August 11, 1975—STEWART, J.
X 12-2-75	L. Lombardi—Filed Govt's Notice of Readiness for trial on or after 12-5-75.
X 11-26-75	L. Lombardi—Closed statistically because (X) ( ) ( ) ( ) is ( ) ( ) ( ) ( ) a ( ) ( ) ( ) ( ) positive. In all other respects this case is still pending.

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DATE	PROCEEDINGS
1-22-76	CHEUNG KIN PING= Fld Deft's Notice of Motion for Order...dismissing indictment, Suppressing, Production....etc.....No ret date supplied.
2-4-76	Fld Papers received from Mag Raby Re:Lai Mong Wah= Docket Sheet-disposition sheet 1&2 Appearance Bond in the amt of \$15,000 Cash.-Warrant for anrrest on 7-2-75 executed Final Commitment & release.
2-4-76	PING= Fld Papers rcvd from Mag Raby= Docket Sheet-Cpy of Warrant of Arrest executed on 7-2-75...Appearnce Bondin the sum of \$15,000-by Peerless Ins Co-Bond-Disposition Sheet, Final Commitment & release, L.
4-19-76	Filed affdvt of T.E. Engel, AUSA, in opposition to various motions mady by the Deft CHEUNG KIN PENG and joined in, to the extent applicable, by the Deft LAI MONG.
4-19-76	Filed Govt's Memorandum of Law.
4-27-76	CHEUNG KIN PING= Filed Deft's reply manorandum in support of motion to suppress post-arrest statements. (R/T b-7c)
5-12-76	CHEUNG KIN PING - Fld memo end. on motion fld. 1-22-76 to the extend the within motion dismiss for undue pre-indictment delay, it is denied. There is no basis to dismiss on grounds of double jeopardy. to the extend based on double jeopardy, the motion to dismiss is denied. The court declines to hold a further suppression hearing on a claim regarded as not even colorable. Allother issues raised in the within motion , to extend not determined by agreement or oral directions of the Court are denied So Ordered.. Brieant,J. M/N
5-27-76	CHEUNG KIN PING= Filed deft's notice of motion & affdvt for re-argument & re-consideration of item III of deft's original omnibus motion & for an evidentiary hearing to suppress any & all statements allegedly made by the def't on or about 4-6-72 in Miami, Florida. Ret. 6-7-76
6-2-76	CHEUNG KIN PING - Filed letter from T.E. Engel AUSA to Judge Brieant dated 4-27-76
6-3-76	Filed transcript of record of proceedings, dated 4-20-76
6-6-76	Filed Govt's proposed examination fo prospective jurors.
6-6-76	Filed defts. request on voir dire.
6-6-76	Filed letter from Assistant U.S. Atty. Thomas E. Engel to JUDGE BRIEANT, dated 06-03-76.
6-8-76	Filed memo end on motion filed 5-27-76 Motion denied except to extent set forth on the trial record this date So ordered Brieant,J. M/N
6-18-76	LAI MONG WAH- Filed deft's request to charge
6-21-76	CHEUNG KIN PING- Filed deft Cheung Kin Ping's request to charge
6-21-76	CHEUNG KIN PING Filed Govt's requests to charge
6-21-76	LAI MONG WAH- Filed Govt's requests to charge

DATE	PROCEEDINGS
12-31-75	Case reassigned to Judge Brieant for all purposes (see memo dated 12-17-75) Fra
6-7-76	CHEUNG KIN PING- Deft (atty present) Interpreters Laura Ho & Shirley Moy present Jury trial begun
6-8-76	Cheung KIN PING- " " " " " " " " " " " " " " trial con
6-9-76	" " " " " " " " " " " " " " "
6-10-76	" " " " " " " " " " " " " " "
6-11-76	" " " " " " " " " " " " " " "
6-14-76	" " " " " " " " " " " " " " "
6-15-76	" " " " " " " " " " " " " " "
6-16-76	" " " " " " " " " " " " " " "
6-17-76	" " " " " " " " " " " " " " "
6-13-76	CHEUNG KIN PING- <sup>Jury Verdict</sup> Deft cont'd & concluded Deft guilty on ct 1 under new & old law ct 6 & ct 19 PSI ordered Bail cont'd Sentence Adj to 7-22-76...Brieant,J.
6-7-76	LAI MONG WAH - DEft (atty present) Interpreters Laura Hoy & Shirley Moy present Jury trial begun
6-8-76	LAI MONG WAH- " " " " " " " " " " " " " " trial cont
6-9-76	" " " " " " " " " " " " " " "
6-10-76	" " " " " " " " " " " " " " "
6-11-76	" " " " " " " " " " " " " " "
6-14-76	" " " " " " " " " " " " " " "
6-15-76	" " " " " " " " " " " " " " "
6-16-76	" " " " " " " " " " " " " " "
6-17-76	" " " " " " " " " " " " " " "
6-18-76	LAI MONG WAH- Trial c ont'd & concluded Jury verdict guilty on ct 1 under old & new law Ct 4 t 5 & ct 7 .Deft aquitted on ct 3 by the court Jury unable to a on verdict on ct 2 Court dismisses ct 2 on deft's motion .PSI ordered Bail c bail limits exrended t N.J. Sentence adj to 7-22-76...Brieant,J
7-9-76	LARRY LOMBARDI- Filed the following papers rec'd from Mag Raby (Mag #76-765) Docket entry sheet-Warrant for arrest of deft-disposition sheet-CJA form #23 Financial affid-copy of indictment- Order appointing counsel
7-16-76	LARRY LOMBARDI /Pleads NOT GUILTY Deft remanded in leau of bail fixed at \$50,000 PRB secured by \$5,000 cash or surety to be co-signed by both brothers .Conditions of bail bein deft report on Tuesdays & Thursdays before noon in person to pre-trial servie in rm 220 Trial scheduled for 9-13-76 in Rm 1506 ....Brieant,J.
7-10-76	LAI MONG WAH- Filed Govt's Sentencing Memorandum.
7-26-76	CHEUNG KIN PING- Filed Judgment & Commitment Order- The Def is hereby committed the custody of the Atty General for imprisonment for a period of SEVEN (7) YEARS each of COUNTS #1 AND #6, to run concurrently with each other. Imposition of se on COUNT #19 is suspended. Deft, is placed on Probation for a period of SIX (6) to begin immediately, subject to the standing Probation order of this Court. Pursuant to Section 841 of Title 21, U.S. Code, Deft. is placed on SPECIAL PAROL a period of THREE (3) YEARS, to commence upon expiration of confinement. Deft is continued on Bail, until he posts bail pending Appeal fixed in the amount of \$15 cash or surety.....BRIEANT,J.
7-27-76	CHEUNG KIN PING- Filed Notice of Appeal to the U.S.C.A. for the 2nd Circuit from Judgment dated 7-26-76. Leave to proceed on appeal in forma pauperis is granted. Brieant,J. (Copies mailed to AUSA & Deft.)
	(Cont'd on Page #4)

DATE	PROCEEDINGS
7-26-76	LAT MONG WAH- Filed Judgment & Commitment Order- The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of five (5) Years on COUNT #1; TEN (10) YEARS on each of COUNTS 4,5 and 7, to run concurrently with each other BUT CONSECUTIVELY to sentence imposed on COUNT #1. Pursuant to Section 841 of Title 21, U.S. Code, Deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, to commence upon expiration of confinement. Deft is REMANDED in Lieu of Bail pending Appeal fixed in the amount of \$50,000.00 cash or surety.....BRIEANT, J.
8-3-76	LAT MONG WAH- Filed Deft's Notice of Appeal to the A.U.S.A. for the 2nd Circuit from the Judgment on Counts 1,4,5,7, of Indictment entered on 7-26-76 (n/a)
7-29-76	CHEUNG KIN PING- Filed Deft's Surect Bond Pending Appeal in the sum of \$15,000.00 dated 7-29-76.
8-12-76	Filed transcript of record of proceedings, dated June 1, 8, 9, 10, 11, 14, 1976
8-12-76	Filed transcript of record of proceedings, dated June 15, 16, 17, 18, 1976
8-17-76	Filed Notice that the record of appeal has been certified and transmitted to the U.S.C.A. for the 2nd Circuit on 8-17-76.
9-1-76	LAT MONG WAH- Filed letter dated 8-16-76 from Julia P. Heit to Brieant, J.
9-9-76	CHEUNG KIN PING., Filed notice that the Supplemental record of appeal has been certified and transmitted to the U.S.C.A. on 9-9-76.
9-13-76	Larry Lombardi- Filed defts. proposed Questions for the voir dire.
9-13-76	Filed govt's memorandum of law.
9-13-76	LARRY LOMBARDI- Deft atty present Jury trial begun Cts 14,15 & 16 dismissed with prejudice.....Brieant, J.
9-14-76	LARRY LOMBARDI- Trial cont'd
9-15-76	LARRY LOMBARDI- Trial cont'd & concluded. Jury verdict Deft Guilty on cts 1,7,9,11,12, 17 & 18 . PSI ordered. Sentence adj to 10-8-76 Remanded.....Brieant, J
9-15-76	CHEUNG PIN KING- F'd not c. of crt f'nt on of r'cord to USCA on 9-15-76
10-6-76	SAMMY CHOU- FUGITIVE - B/W 6-23-75..... BRIEANT, J.
10-6-76	CHANG YU CHING- FUGITIVE - B/W 6-23-76..... BRIEANT, J.
10-8-76	LARRY LOMBARDI- Filed Judgment & Commitment Order- The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of TEN (10) YEARS on each of COUNTS #1,7,9,11,12,17 and #18, to run concurrently with each other. Pursuant to Sec. 841 of Title 21, U.S. Code, Deft is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, to commence upon expiration of confinement. REMANDED....BRIEANT, J.
10-13-76	LARRY LOMBARDI- Filed Deft's Notice of appeal to the USCA for the 2nd Circuit from the final Judgment of October 8, 1976. Leave to proceed on appeal in Forma Pauperis is granted.....BRIEANT, J.
11-1-76	LARRY LOMBARDI- F'd notice of certification of record to USCA on 11-1-76
11-16-76	LARRY LOMBARDI- Fld magistrates final commitment dated 7-6-76



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

B

UNITED STATES OF AMERICA, :  
-----x- v - :  
-----x

LARRY LOMBARDI, 曹國祺(SAMMY CHO), a/k/a "Cho Kwok Chung,"	: <u>INDICTMENT</u>
CHEUNG KIN PING, a/k/a "Siao Moo Bee,"	: 75 Cr. 614
LAI MONG WAH, a/k/a "Wah Je," a/k/a "Gloria" a/k/a "Big Sister",	: -----x
CHANG YU CHING,	: Defendants. : -----x

COUNT ONE

The Grand Jury charges:

1. On or about the 1st day of January, 1970, and continuously thereafter up to and including the 30th day of April, 1972, in the Southern District of New York, and elsewhere, LARRY LOMBARDI, SAMMY CHO, a/k/a "Cho Kwok Chung", CHEUNG KIN PING, a/k/a "Siao Moo Bee," LAI MONG WAH, a/k/a "Wah Je," a/k/a "Gloria," a/k/a "Big Sister", CHANG YU CHING, the defendants, and others to the Grand Jury known and unknown, including Liu Yeuh Han, a/k/a "Dr. John Liu," Yuin Kwei Sang, a/k/a "George Yuin," Ting Yee Fong, a/k/a "Doo Moo Bee," Ka Chung Fuk, John Doe, a/k/a "Ah Dee," John Doe, a/k/a "Ah Sung,"

" Americo Spagnuolo,

named herein as co-conspirators but not as defendants, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate,

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H-285

Sections 812, 841 (a) (1), 841 (b)(1)(A),  
951 (a)(1) and 952 of Title 21, United States Code.

4. It was further a part of said conspiracy that  
the said defendants and co-  
conspirators unlawfully, wilfully and knowingly would import  
into the United States from a place outside thereof, to wit,  
Hong Kong, British Crown Colony, Schedule I narcotic drug  
controlled substances, the exact amount thereof being to the  
Grand Jury unknown, in violation of Sections 812, 951 (a)(1)  
and 952 of Title 21, United States Code.

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H-285

5. It was further a part of said conspiracy that the said defendants and co-conspirators unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841 (a)(1) and 841 (b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

2. In the winter of 1970-71 a sailor entered the Golden Star Bar, 51 East Broadway, New York, New York and spoke to defendant LAI MONG WAH.

3. In the winter of 1970-71 defendant LAI MONG WAH received approximately three pounds of heroin off a ship docked at Staten Island, New York.

4. In or about March, 1971, co-conspirators Yuin Kwei Sang and Liu Yueh Han met in Room 1104 of the Woodner Hotel, 3636 16th Street, N.W., Washington, D.C.

5. In or about March, 1971, co-conspirator Liu Yueh Han paid co-conspirator Yuin Kwei Sang \$15,000 in the vicinity of the Peking Restaurant, 5522 Connecticut Avenue, N.W., Washington, D.C.

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6. In or about March, 1971, defendant LAI MONG WAH sent approximately \$10,000 from New York, New York to defendant CHANG YU CHING in Hong Kong, British Crown Colony.

7. In or about September, 1971, a sailor delivered two coffee tables, each containing approximately two and a half pounds of heroin to an apartment rented by defendant LAI MONG WAH at 133 East 4th Street, New York, New York.

8. In or about September, 1971, defendant CHEUNG KIN PING

received approximately eight ounces of heroin at 80 First Avenue, New York, New York.

9. On or about September 29, 1971, co-conspirator Liu Yueh Han gave another person \$2500 in the Peking Restaurant 5522 Connecticut Avenue, Washington, D.C.

10. In or about September, 1971, defendant SAMMY CHO distributed approximately 15 pounds of heroin at 274 Mott Street, New York, New York.

11. In or about September, 1971, defendant LARRY LOMBARDI, at 95 East Broadway, New York, New York, received approximately two kilograms of heroin and tested it by boiling a sample of it, contained in a test tube, in mineral oil.

12. On several occasions in or about September, 1971, defendant LARRY LOMBARDI received quantities of heroin contained in five-ounce bags totaling approximately 15 pounds of heroin.

13. In or about October, 1971, defendant SAMMY CHO transported approximately 20 pounds of heroin in a red Studebaker from 274 Mott Street to 133 East 4th Street, New York, New York.

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N-285

14. On several occasions in or about October, 1971, defendant LARRY LOMBARDI received quantities of heroin contained in five-ounce bags, totaling approximately 20 pounds of heroin.

15. In or about December, 1971, defendant LARRY LOMBARDI received approximately one pound of heroin at 95 East Broadway, New York, New York.

16. In or about November, 1971, defendant LARRY LOMBARDI and co-conspirator Americo Spagnuolo counted approximately \$30,000 at 95 East Broadway, New York, New York.

19. On or about December 22, 1971, defendant LAI MONG WAH, negotiated approximately \$14,000 in personal money orders through the Hang Seng Bank, Hong Kong, British Crown Colony.

20. In or about January, 1972, defendants LAI MONG WAH, CHEUNG KIN PING, and SAMMY CHO met in the Wing Wah Restaurant, Hong Kong, British Crown Colony.

22. On or about January 26, 1972, defendants LAI MONG WAH, CHEUNG KIN PING, and SAMMY CHO met in the Hotel Singapore, 54 Kennedy Road, Hong Kong, British Crown Colony.

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26. On or about April 5, 1972, defendants CHEUNG KIN PING and SAMMY CHO possessed approximately 22 pounds of heroin at Dodge Island Seaport, Miami, Florida.

(Title 21, United States Code, Section 846).

COUNT SEVEN

The Grand Jury further charges:

In or about the month of September, 1971, in the Southern District of New York, LAI MONG WAH, a/k/a "Wah Je," a/k/a "Gloria" a/k/a "Big Sister", and LARRY LOMBARDI, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one kilogram of heroin.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A).)

COUNT NINE

The Grand Jury further charges:

In or about the month of September, 1971, in the Southern District of New York, LARRY LOMEARDI, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A).)

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COUNT ELEVEN

The Grand Jury further charges:

In or about the month of October, 1971, in the Southern District of New York, LARRY LOMBARDI, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWELVE

The Grand Jury further charges:

In or about the month of October, 1971, in the Southern District of New York, LARRY LOMBARDI, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

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COUNT SEVENTEEN

The Grand Jury further charges:

On or about the 23rd day of November, 1971, in the Southern District of New York, LARRY LOMBARDI, the defendant, unlawfully, intentionally and knowingly did possess possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT EIGHTEEN

The Grand Jury further charges:

In or about the month of December, 1971, in the Southern District of New York, LARRY LOMBARDI, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one pound of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

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Forelady

PAUL J. CURRAN  
United States Attorney

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

LARRY LOMBARDI, 曾國輝  
(SAI M Y CHO), a/k/a "Cho Kwok  
Chung," et al.,

Defendants

---

INDICTMENT

Title 21, U.S.C. §§ 173, 174,  
812, 951, 952, 841, 846, 843.

PAUL J. CURRAN  
United States Attorney  
A TRUE BILL

Foreman

FBI-SS-1-12-70-2011-4925

## 2 CHARGE OF THE COURT C

US v. Lombardi (Brieant, J.)

75 Crim. 614

9/15/76 4

(In open court, jury present.)

5 THE COURT: Mrs. Tucker and members of the  
6 jury: We are now at that stage in the trial where you will  
7 soon undertake your final function as jurors, and here you  
8 perform one of the most sacred obligations of citizenship,  
9 that is, acting as ministers of justice.

10 You are to discharge this final duty in an  
11 attitude of complete fairness and impartiality, and, as I  
12 emphasized when you were first selected, without bias or  
13 prejudice, for or against the Government or the defendant  
14 as parties to this controversy.

15 Let me state the fact that the Government is  
16 a party entitles it to no greater consideration than that  
17 accorded to any other party to a litigation. By the same  
18 token, it is entitled to no less consideration. All parties,  
19 individuals and Government alike, stand as equals before  
20 the bar of justice in this court.

21 Your final role here is to decide and pass  
22 upon the fact issues in the case. You are the sole and  
23 exclusive judges of the facts. You determine the weight  
24 of the evidence, you appraise and decide the credibility  
25 or truthfulness of the witnesses, and you draw the reasonable

2 inferences or conclusions from the evidence and you resolve  
3 such conflicts as there may be in the evidence.

4 I shall later tell you how you determine  
5 credibility of witnesses.

6 My final function here is to instruct you as  
7 to the law, and it is your duty to accept these instructions  
8 as to the law and then apply them to the facts as you may  
9 find them to be. You are not to consider any one instruc-  
10 tion as I give you alone as stating the law, but you must  
11 consider all of my instructions taken together as a whole.

12 With respect to any fact matter, it is your  
13 recollection and yours alone which governs. Anything that  
14 the lawyers, either for the Government or the defendant,  
15 may have said with respect to matters in evidence, whether  
16 during the trial, in a question, in arguments or in summa-  
17 tions, is not to be substituted for your own recollection  
18 of the evidence.

19 Anything I might say during the trial or any-  
20 thing I might refer to during the course of these instruc-  
21 tions as to any matter in evidence is not to be taken in  
22 place of your own recollection.

23 The attorneys not only have their right but it  
24 is their duty to make objections, to press whatever legal  
25 theories or arguments they may have. They are simply

2      performing their duty, and any evidence as to which an  
3      objection was sustained by the Court and any evidence ordered  
4      stricken out by the Court must be disregarded in its  
5      entirety.

6              It is not my function here to favor one side  
7      or the other or to indicate to you, the jury, in any way  
8      that I have any opinion as to the truthfulness of any  
9      witness or as to the guilt or innocence of the defendant.  
10         That is your function, it is yours alone to decide. I  
11         leave it entirely with you. So please don't assume that  
12         I hold any opinion in any matters concerning this case,  
13         and please don't reach any conclusion that I may have some  
14         attitude or that I may tend to favor one side or the other  
15         in the case. I do not.

16              As I told you earlier, the indictment here it-  
17         self is no evidence of the crimes charged. Instead, an  
18         indictment is the method or procedure under the law whereby  
19         a person accused of a crime by a grand jury is brought in  
20         to court to have his case determined by a trial jury, such  
21         as yourselves, and, therefore, the indictment must be given  
22         no evidentiary value. It shall be treated by you only as  
23         an accusation. It is not evidence or proof of a defendant's  
24         guilt and no weight or significance whatsoever is to be  
25         given to the fact that an indictment has been returned

2 against the defendant.

3                   He has pleaded not guilty, and thus the Govern-  
4                   ment has the burden of proving the charges beyond a reason-  
5                   able doubt before anyone may be convicted of any crime.

6                   A defendant doesn't have to prove his innocence.

7                   On the contrary, he is presumed to be innocent of the  
8                   accusations contained in the indictment. This presumption  
9                   of innocence was in his favor at the start of the trial,  
10                  as I believe I told you before, it continued in his favor  
11                  throughout the entire trial and is in his favor now and  
12                  remains in his favor during the course of your deliberations  
13                  in the jury room, and the presumption of innocence is re-  
14                  moved if and when you, the jury, are satisfied that the  
15                  Government has sustained its burden of proving the guilt  
16                  of the defendant beyond a reasonable doubt as to that count  
17                  that you are then considering.

18                  Of course, unless you are so convinced, you  
19                  must find him not guilty.

20                  The question naturally comes up, what is a  
21                  reasonable doubt?

22                  Members of the jury, these words almost define  
23                  themselves. It is a doubt founded on reason, arising out  
24                  of the evidence in the case or the lack of evidence. It  
25                  is a doubt which a reasonable person has after carefully

2 weighing all the evidence. Reasonable doubt is a doubt  
3 that appeals to your reason, to your judgment, to your  
4 common sense and experience. It is not caprice or whim or  
5 speculation or conjecture or suspicion. It is not the ex-  
6 cuse to avoid the performance of an unpleasant duty and it  
7 is not sympathy for a defendant.

8                   If after a fair and impartial consideration of  
9 all the evidence you can candidly and honestly say you are  
10 not satisfied of the guilt of the defendant, that you do  
11 not have an abiding conviction of the defendant's guilt on  
12 the particular charge you are then considering, in some,  
13 if you have such a doubt as would cause you as prudent  
14 persons to hesitate before acting in matters of importance  
15 to yourselves, then you have a reasonable doubt, and in  
16 that circumstance, it is your duty to acquit.

17                   On the other hand, if after such an impartial  
18 and fair consideration of all the evidence, you can candidly  
19 and honestly say you do have an abiding conviction of a  
20 defendant's guilt, such a conviction as you would be willing  
21 to act upon in important and weighty matters of the personal  
22 affairs of your own life, then you have no reasonable doubt,  
23 and under those circumstances, it is your duty to convict.

24                   Reasonable doubt does not mean a positive  
25 certainty or beyond all possible doubt. If that were t

2 rule, few men, however guilty they might be, would ever be  
3 convicted, because it is practically impossible for a person  
4 to be absolutely and completely convinced of any controverted  
5 fact which by its nature is not susceptible of mathematical  
6 certainty. For that reason, the law in a criminal case is  
7 that it is sufficient if the guilt of a defendant is  
8 established beyond a reasonable doubt, not beyond all  
9 possible doubt.

10 The indictment in this case, members of the  
11 jury, now contains seven counts. Each count charges a  
12 separate crime, and they each must be considered separately.  
13 Of course, you will be asked to give a separate verdict as  
14 to each count. You will see in the indictment, if you ask  
15 to look at it, that the numbers are not sequential. This  
16 is because counts which pertain solely to other people or  
17 which are not of your concern have been eliminated so there  
18 will not be any distraction, and you must not speculate or  
19 engage in any discussion or conjecture as to what or who  
20 the other counts concerned.

21 Mr. Lombardi is the only defendant on trial  
22 before you. He is the only person with respect to whom  
23 you will be asked to announce a verdict, although, as I will  
24 explain to you shortly, in considering his case you may  
25 have to determine the nature and extent of the participation

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2 or activities, if any, of Lai Mong Wah and Cheung Kin Ping,  
3 Chang Yu Ching, Sammy Cho, Yuin Kwei Sang also known as  
4 George Yuin, Ting Yee Fung or others whom you may find to  
5 have been conspirators.

6 In this connection, you are not to concern  
7 yourselves with or speculate upon the reasons why only  
8 Mr. Lombardi is being tried here before you or why the  
9 other defendants, Cheung Kin Ping and Lai Mong Wah had a  
10 separate trial. Those are matters which only concern the  
11 Court and are not for you to consider.

12 You will have to bear in mind that guilt is  
13 personal. Whether or not the defendant on trial before you  
14 has been proved guilty beyond a reasonable doubt must be  
15 determined separately and solely with respect to him, solely  
16 on the evidence presented against him or the lack of  
17 evidence, and without regard to the evidence as to any of  
18 these other persons that I mentioned.

19 For your guidance in considering the evidence,  
20 I have to tell you that there are two classes of evidence  
21 recognized and admitted in courts of justice, upon either  
22 of which the jurors may find an accused person guilty of  
23 a crime.

24 One is called direct evidence and the other  
25 is called circumstantial evidence.

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2 Direct evidence tends to show the fact in issue,  
3 without any need for any other amplification, although,  
4 of course, there is always the question as to whether it  
5 is to be believed.

6 Circumstantial evidence is evidence that tends  
7 to show facts from which the fact in issue may reasonably  
8 be inferred. It is evidence that tends to prove the fact  
9 in issue by proof of other facts which have a legitimate  
10 tendency to lead the mind to infer that the facts sought  
11 to be established are true. There is a traditional example.

Sometimes it is difficult to tell merely by looking out of the window of a courtroom such as this whether it is raining outside or not. But if you look at the window and you see the people passing by in the streets have their umbrellas up, you usually come to the conclusion it must be raining. Here you have direct evidence, the evidence of your own senses, that the umbrellas are up, and that fact constitutes circumstantial evidence from which you are entitled to conclude that it must be raining.

21 In other words, circumstantial evidence con-  
22 sists of facts proved from which the jury may infer by a  
23 process of reasoning other facts in issue. Circumstantial  
24 evidence, if believed, is of no less value than direct  
25 evidence, for in any case you must be convinced beyond a

2 reasonable doubt of the guilt of the defendant before he  
3 may be convicted of any crime.

4 The evidence in this case consists of the sworn  
5 testimony of the witnesses and all exhibits which have been  
6 received into evidence and all facts which have been ad-  
7 mitted or stipulated. I told you earlier that a stipulation  
8 was equivalent to testimony or evidence and could be so  
9 treated by you.

10 Statements and arguments of counsel, however,  
11 are not evidence in the case.

12 When the attorneys for both sides stipulate  
13 or agree as to a fact or as to what testimony would be if  
14 a person were brought in here to testify under oath, you  
15 may accept the stipulation as evidence and you may regard  
16 that fact as proved.

17 However, you are the judges of all issues of  
18 fact. It is for you to determine all factual questions in  
19 the case. In determining what evidence you will accept as  
20 true, you make your own evaluation of the testimony given  
21 by each of the witnesses, and you determine for yourselves  
22 what you believe to be the truth and the degree of weight  
23 or significance that you choose to give to that testimony.

24 The testimony of a witness may fail to conform  
25 to the facts as they occurred because the witness may

2 intentionally be telling a falsehood or because the witness  
3 didn't accurately hear or see what he testified about or  
4 because his recollection of the event is faulty or because  
5 he hasn't expressed himself clearly in giving testimony.  
6 There is no magic formula to evaluate testimony.

7 You take with you in your deliberations all of  
8 the experience and background of your everyday lives. Each  
9 of you in your everyday affairs determine for yourselves  
10 the reliability of statements made to you by others, and  
11 the same tests you use in your everyday dealings are the  
12 tests which you apply in your deliberations as jurors.

13 You may, of course, consider the interest or  
14 lack of interest of any witness in the outcome of the case.  
15 A witness who is interested in the outcome is not necessarily  
16 unworthy of belief. The interest of a witness, however,  
17 is a factor or a possible motive which you may consider in  
18 determining the weight and credibility to be given to his  
19 testimony.

20 In doing this, you may also consider whether  
21 the testimony of a witness is corroborated or borne out  
22 by the testimony of others or by documentary evidence or  
23 by exhibits. You may consider the manner in which the  
24 witness gives his testimony on the stand, the appearance and  
25 conduct of the witness in giving his testimony, the oppor-

2 tunity the witness had to observe and remember the facts  
3 concerning which he testifies, and the probability or im-  
4 probability of the testimony in the light of all the other  
5 events in the case. You may also consider whether any  
6 witness had a motive to lie.

7 These are all items to be taken into your  
8 consideration in determining the truthfulness and weight,  
9 if any, which you will assign to that witness' testimony.  
10 If these considerations make it seem to you that there is  
11 a discrepancy in the evidence, you will have to consider  
12 whether this can be reconciled by fitting the two conflicting  
13 items together.

14 If that's not possible, then you should consider  
15 and determine which of the conflicting versions, if any,  
16 you will accept.

17 If a witness is shown to have knowingly testi-  
18 fied falsely concerning any material matter in a trial,  
19 you have a right to distrust that witness' testimony in  
20 other things, and you may reject all of the testimony of  
21 that witness or you can give it or such parts of it such  
22 credence as you think it deserves.

23 You heard the testimony of two witnesses  
24 through the aid of interpreters or translators, and the  
25 interpreter, as you saw here, is required to take an oath

2      that she will make a true translation of the testimony of  
3      a witness and a true translation of the questions put to  
4      the witness. It is only with the aid of these translators  
5      that an English speaking court and jury can have the benefit  
6      of the testimony of persons having relevant information who  
7      do not speak the English language. I remind you that a  
8      witness is no less deserving of belief merely because he  
9      testifies in a foreign language with the aid of an inter-  
10     preter.

11                    A word about the testimony of Yuin Kwei Sang,  
12                    also known as George Yuin, called by the Government as a  
13                    witness at the trial.

14                    By his own testimony, Mr. Yuin was an accomplice  
15                    in the crimes charged against this defendant, Larry Lombardi,  
16                    and by his own testimony he participated in other crimes.

17                    The Government is frequently called upon to  
18                    use accomplices as witnesses. Often it has no choice be-  
19                    cause the Government must rely on such witnesses to trans-  
20                    actions as there may be, and it is not frequent that people  
21                    of impeccable reputation are witnesses to and participants  
22                    in criminal endeavors. The Government frequently must use  
23                    such testimony, or else it would be impossible or difficult  
24                    to detect and prosecute wrongdoers. There is no require-  
25                    ment in the Federal Court that the testimony of accomplices

2 be corroborated.

3                   The Government contends in this case that there  
4 is considerable or some corroboration. Whether you find  
5 it so is a factual question for you to decide based on the  
6 whole trial record.

7                   However, as I said, the testimony of an accom-  
8 plice need not be corroborated. A conviction may rest upon  
9 the uncorroborated testimony of an accomplice, if you be-  
10 lieve him and if you find it credible. But the fact that  
11 a witness was an accomplice or may be an accomplice should  
12 be considered by you as bearing against his credibility.

13                  However, it doesn't follow that because a  
14 person has acknowledged participation in a crime as charged  
15 against the defendant or other crimes, he is not capable  
16 of giving a truthful version of what is testified to. His  
17 testimony, however, should be viewed with great caution,  
18 scrutinized carefully. Was the testimony inspired by any  
19 motive of reward or self-interest or hostility to the  
20 defendant so that such a witness gave false or slanted  
21 testimony against him? If you find it was, you ought to  
22 unhesitatingly reject it.

23                  However, if after a cautious and careful examina-  
24 tion of the witness' testimony, having observed and con-  
25 sidered his demeanor or behavior on the witness stand, the

2 way he answers the questions and the nature of the testimony  
3 given by him, you are satisfied that that witness told the  
4 truth as to certain events, there is no reason why you  
5 should not accept it as truthful and credible and act on  
6 it accordingly.

7 It is also permissible for the Government to  
8 arrange for special benefits for accomplices who become  
9 cooperating individuals, and this can include provisions  
10 for their financial support and that of their families or  
11 agreements to obtain new employment for them in a different  
12 place or attempting to prevent deportation to Hong Kong  
13 or arranging to bring the wife to the United States from  
14 Hong Kong. All of these procedures are permissible.

15 However, there is the possibility that such  
16 benefits conferred upon a self-admitted criminal might  
17 create a bias on his part in favor of the Government or  
18 might be an inducement to testify falsely. Furthermore,  
19 when such a criminal is caught dead to lights and faces a  
20 possible sentence from the Court, he is usually seeking to  
21 redeem himself and get a lighter sentence by showing good  
22 citizenship and by coming in and testifying against others  
23 and submitting to rigorous cross examination and telling  
24 what he knows about the activities of other people.

25 This, too, is perfectly proper and permissible,

2 and, indeed, without such testimony it would be difficult,  
3 if not impossible, to prosecute wrongdoers.

4                   However, all these matters are important for  
5 your consideration in weighing the testimony of George Yuin,  
6 along with all the other relevant evidence in the case,  
7 because those factors do or they may create a possible  
8 motive to exaggerate or to testify falsely.

9                   A defendant in a criminal case is not called  
10 upon to prove his innocence. I told you earlier, the  
11 burden is upon the Government to prove the accused guilty  
12 beyond a reasonable doubt as to every essential element of  
13 the crime charged. The defendant has the right to rely  
14 upon the failure of the prosecution to establish such  
15 proof. A defendant may also rely upon evidence brought out  
16 during cross examination of the Government's witnesses.  
17 The law does not impose upon a defendant the duty of pro-  
18 ducing any witness.

19                   You should not speculate, therefore, as to why  
20 the defendant didn't testify. There may be many reasons  
21 why a defendant may decide not to, and you are not to  
22 speculate as to these things. You may not draw any inference  
23 whatsoever from the defendant's failure to take the stand.

24                   Turning to the indictment in this particular  
25 case, I remind you that it charges this defendant Larry

2 Lombardi in seven counts and each count is a separate crime.  
3 You will be asked to announce a separate verdict as to  
4 each count. The first count of the indictment I will refer  
5 to for simplicity of reference as the conspiracy count.  
6 The six remaining counts which are numbered 7, 9, 11, 12,  
7 17 and 18, each charge substantive violations of the same  
8 Federal statutes and will be referred to collectively as  
9 the substantive counts.

10 While I may discuss them together, I remind you  
11 that each count must be kept separate in your mind, dis-  
12 tinct, and will be decided separately, just as if the other  
13 counts were not charged.

14 Now I will read Count 1 of the indictment.

15 The grand jury charges: On or about the first  
16 day of January 1970, and continuously thereafter, up to  
17 and including the 30th day of April 1972, in the Southern  
18 District of New York and elsewhere, Larry Lombardi, Sammy  
19 Cho, also known as Cho Kwok Chung, Cheung Kin Ping, also  
20 known as Siao Moo Bee, Lai Mong Wah, also known as Wah Je,  
21 also known as Gloria, also known as Big Sister, Chang Yu  
22 Ching, the defendants and others to the grand jury known  
23 and unknown, including Liu Yeuh Han, also known as Doctor  
24 John Yu, Yuin Kwei Sang, also known as George Yuin, Ting  
25 Yee Fong, also known as Doo Moo Bee, Ka Chung Fuk, John Doe,

2 also known as Ah Dee and John Doe, also known as Ah Sung,  
3 and Americo Spagnuolo, named herein as co-conspirators but  
4 not as defendants, unlawfully, willfully and knowingly  
5 combined, conspired, confederated and agreed together and  
6 with each other to violate Sections 812, 841Al, 841AlA,  
7 951Al and 952 of Title 21 of the United States Code.

8                   It was further a part of said conspiracy that  
9 the said defendants and co-conspirators unlawfully, willfully  
10 and knowingly would import into the United States from a  
11 place outside thereof, to wit, Hong Kong, British Crown  
12 Colony, Schedule 1 narcotic drug controlled substance, the  
13 exact amount thereof being to the grand jury unknown, in  
14 violation of Sections 812, 851Al, 852, Title 21 of the  
15 United States Codes.

16                   Five. It was further a part of said conspiracy  
17 that the said defendants and co-conspirators unlawfully,  
18 willfully and knowingly would distribute and possess with  
19 intent to distribute Schedule 1 narcotic drug controlled  
20 substances, the exact amount thereof being to the grand  
21 jury unknown, in violation of Sections 812, 841Al and  
22 841BlA of Title 21, United States Code.

23                   Overt Acts. In pursuance of the said conspiracy  
24 and to effect the objects thereof, the following overt acts  
25 were committed in the Southern District of New York and

2 elsewhere. There follows a list of the overt acts, and  
3 I will read those to you in just a few moments.

4 Members of the jury, this defendant is charged  
5 in Count 1 with violating Title 21, United States Code,  
6 Section 846. It is not important for you to remember the  
7 section number, but I do want you to pay close attention  
8 at this point because I am about to set forth for you the  
9 three essential elements of the crime of conspiracy.

10 In order to convict the defendant on Count 1,  
11 the following three essential elements must be established  
12 to your satisfaction beyond a reasonable doubt.

13 If your deliberations tell you that any one of  
14 these three has not been established beyond a reasonable  
15 doubt, you are to find a verdict of not guilty on Count 1  
16 and then go on and consider the rest of the counts.

17 If you are convinced that all three elements  
18 have been proved beyond a reasonable doubt, then it is your  
19 duty to convict the defendant on Count 1. Here are the  
20 three elements:

21 First, that the conspiracy charged in Count 1  
22 did, in fact, exist, that is, that two or more persons  
23 agreed together, with each other, to violate the Federal  
24 narcotics laws at some point at or about the time period  
25 alleged in the indictment and in the fashion therein set

2 forth, which is mentioned as being from January 1, 1970 to  
3 April 30, 1972. That's the first element.

4 The second element, that the defendant Larry  
5 Lombardi knowingly and willfully associated himself with  
6 the conspiracy and did so with the requisite criminal  
7 knowledge and intent, in short that he became a member of  
8 that conspiracy, and did so knowingly and willfully.

9 The third element of the crime of conspiracy  
10 as charged in Count 1 is that one of the conspirators, any  
11 one of them, committed in the Southern District of New York,  
12 at least one of the overt acts set forth in the indictment  
13 at or about the time and place alleged.

14 Now I will speak with you briefly about each  
15 one of these elements one at a time.

16 The first element of Count 1 you must determine  
17 is whether the conspiracy charged in this indictment did,  
18 in fact, exist. What is a conspiracy? For our purposes  
19 in this case, a conspiracy is simply a combination or an  
20 agreement or an understanding reached by two or more members  
21 to act together and in concert to commit the crime mentioned  
22 in the indictment. A narcotics conspiracy as charged by  
23 the Government in this case under Count 1 of the indictment  
24 and as prohibited by law may be thought of as a chain of  
25 people extending from the farms in China, or wherever the

2 heroin originates, to the market in New York City in this  
3 district where the ultimate consumers are found.

4 The contention here is that the defendant Larry  
5 Lombardi on trial before you was one of the links in that  
6 chain. Your common sense will tell you that in order to  
7 make heroin available for addicts for ultimate consumption  
8 in New York, different people must play different parts,  
9 and there will be different links in the chain reaching  
10 from Asia to the point of ultimate consumption here.

11 In order for this defendant to be found guilty  
12 of the crime of conspiracy to violate the narcotics laws,  
13 it must appear to your satisfaction beyond a reasonable  
14 doubt that he agreed, whether tacitly or explicitly, whether  
15 in words or by his actions, to work together with at least  
16 one other person, in this case George Yuin or Lai Mong Wah,  
17 in order to achieve a common criminal purpose of distributing  
18 this narcotic drug. The gist of the crime of conspiracy  
19 is the unlawful combination or agreement by two or more  
20 people to violate the law together.

21 The crime of conspiracy is entirely separate  
22 and distinct and different from the violation of the law  
23 or laws which may have been the object or the purpose of  
24 the conspiracy. Thus, if a conspiracy exists, even if it  
25 should fail in its purposes, the individuals in it may still

2 be convicted of the crime of conspiracy.

3                   The Government is not required with respect to  
4 Count 1 to prove that an actual violation of the narcotics  
5 law took place, but need only prove that the conspiracy  
6 came into existence for the purpose and at or about the  
7 times alleged and that at least one overt act was committed  
8 by a conspirator in furtherance of its purposes, and that  
9 this defendant on trial before you was a knowing, willful  
10 and intentional member of it. I will come to that a little  
11 later.

12                  To establish that a conspiracy existed, the  
13 Government is not required to show that two or more people  
14 sat down around a table and entered into an agreement,  
15 orally or in writing, stating that they had formed a heroin  
16 business or setting forth the details of their plans or  
17 describing the means by which the unlawful project is to  
18 be carried out or establishing the part to be played by  
19 each conspirator. Indeed, it would be extraordinary if  
20 there were such a formal document or agreement.

21                  Your common sense will tell you that when men  
22 and women in fact undertake to enter into a criminal con-  
23 spiracy, much is left to the understanding. Conspirators  
24 usually don't submit their agreements to writing or  
25 acknowledge them before a notary public nor do they publicly

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2       broadcast or advertise their plans. From its nature, a  
3       conspiracy is almost invariably secret in its origin and  
4       execution.

5               But it is sufficient to prove the existence of  
6       a conspiracy if two or more persons, in any manner, through  
7       any contrivance, impliedly or tacitly, came to a common  
8       understanding to violate the law together. The express  
9       language or specific words are not required to indicate  
10      assent to or attachment to a conspiracy, nor is it required  
11      that you should find that all the co-conspirators named  
12      in the indictment joined into the conspiracy in order to  
13      find that it existed as charged.

14              As to the first element, you need only find  
15      that one of the co-conspirators entered into an unlawful  
16      agreement with one or more other persons as charged in  
17      order to find that the conspiracy existed. You may judge  
18      acts and conduct of the alleged conspirators in determining  
19      whether there has been an unlawful agreement which are done  
20      to carry out an apparent criminal purpose. The old adage,  
21      you have all heard it, actions speak louder than words, is  
22      applicable.

23              Usually the only evidence available is that  
24      of disconnected acts which taken together with each other  
25      may show a conspiracy to secure a particular result, just

2 as satisfactorily and conclusively as more direct proof.

3 The offense is complete when the unlawful agreement is  
4 made and any single overt act to effect or advance the  
5 object of the conspiracy is thereafter committed by at  
6 least one co-conspirator.

7 In determining whether the conspiracy charged  
8 in this indictment actually existed, you may consider the  
9 evidence of the acts and conduct of the alleged conspirators  
10 as a whole and the reasonable inferences or conclusions  
11 to be drawn from such evidence.

12 If upon consideration of the evidence, you find  
13 beyond a reasonable doubt that the minds of at least two  
14 of the alleged co-conspirators met in a conspiratorial  
15 agreement to work together in furtherance of the unlawful  
16 scheme charged in the indictment, that is the possession,  
17 sale or distribution of heroin, then that is proof that the  
18 conspiracy, in fact, existed and the first element would  
19 be satisfied.

20 The period of time charged, as I mentioned  
21 earlier, is from on or about January 1, 1970 to April 30,  
22 1972. It is not necessary for the Government to prove that  
23 the conspiracy started and ended on those precise specific  
24 dates.

25 The Government has conceded that Mr. Lombardi,

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2       if he was a member of the conspiracy, did not join it until  
3       the fall of 1971. I believe it was stated to have been  
4       September.

5               The jury may find that he ceased having any  
6       relationship with the conspiracy before January 1972, at  
7       which time Yuin was already in Hong Kong from which he did  
8       not return until after he was arrested and extradited some-  
9       time later. It is essential that you find that the con-  
10      spiracy existed for some substantial time within the period  
11      between September 1, 1971 and December 31, 1971.

12               Insofar as concerns the overt acts, if they  
13      are committed during the existence of the conspiracy, that  
14      is sufficient and, of course, they must also be committed  
15      in this district, at least one of them must be.

16               In this connection, I wish to instruct you  
17      specifically that you may not consider any narcotics trans-  
18      actions engaged in by George Yuin prior to January 1, 1970  
19      as having any bearing whatsoever on the conspiracy charged  
20      in this case. That evidence or testimony by Yuin as to  
21      what he was doing in 1968 and 1969 with narcotics was per-  
22      mitted solely for the limited purpose of showing Yuin's  
23      prior familiarity with drugs or the dealing in heroin and  
24      also as a factor bearing on his credibility.

25               The Government does not contend nor is there

2 any evidence or suggestion that this defendant was engaged  
3 in any way in any narcotics transactions prior to Septem-  
4 ber 1, 1971.

5                   The second element in Count 1 which must be  
6 proved beyond a reasonable doubt is the individual member-  
7 ship in the conspiracy by the defendant Larry Lombardi. If  
8 you do conclude that a conspiracy as charged existed, you  
9 must next determine whether the defendant on trial before  
10 you was a member, that is whether he participated inten-  
11 tionally in the conspiracy, with knowledge of its unlawful  
12 purposes and in furtherance of its unlawful objectives.

13                  In order to find that a defendant was a member  
14 of the conspiracy, you must be convinced beyond a reasonable  
15 doubt that he knowingly and intentionally participated  
16 therein. Thus, mere knowledge by the defendant of the  
17 existence of a conspiracy or of any illegal acts on the  
18 part of an alleged conspirator or mere association with  
19 one or more conspirators is not sufficient to establish  
20 his membership in the conspiracy.

21                  The Government must establish beyond a reasonable  
22 doubt that the defendant was aware of its basic purposes  
23 and objects and entered into the conspiracy with the  
24 specific criminal intent, that is with a purpose to violate  
25 the law.

2 So, if the defendant with an understanding of  
3 the unlawful character of the conspiracy intentionally  
4 engages in actions or advises or assists for the purpose of  
5 furthering the illegal undertaking, he thereby becomes the  
6 knowing and willful participant in a conspiracy, and the  
7 second element of Count 1 may be found to have been satisfied.

16 Your common sense will tell you that in a  
17 conspiracy to distribute narcotics, different members play  
18 different parts. Some of the members are principal actors  
19 and others may have minor roles. It is not the importance  
20 of his position in the scheme which will determine whether  
21 or not guilt was proved beyond a reasonable doubt, but  
22 rather the question of whether knowing of the conspiracy  
23 and its unlawful purposes he intentionally joined in it  
24 and worked toward making it something that he wished to  
25 succeed or that he had a stake in the outcome in the nature

2      of a profit to be realized from the final distribution of  
3      the heroin which he allegedly received from George Yuin  
4      and Lai Mong Wah.

5               You will recall that during this trial I re-  
6      ceived some evidence subject to connection. Because a case  
7      must of necessity come to you in piecemeal fashion, it is  
8      proper for evidence to be received in that way. The Court  
9      shall later rule whether the evidence may be considered at  
10     all, and if so, for what purpose.

11              That evidence that I received subject to  
12     connection may now be considered by you in this case for  
13     whatever weight and value and significance you, the jury,  
14     find it possesses, bearing in mind that you are the sole  
15     judges of the facts and you decide and resolve all factual  
16     issues. That is something I have said to you a number of  
17     times because it is so important.

18              You will notice that most of the objections  
19     made as to which I ruled that certain evidence was to be  
20     taken subject to connection were objections by the attorney  
21     for the defendant who was not present at the time of the  
22     conversations being testified to or the incident being  
23     described.

24              As to the defendant, if you find that he was  
25     not present at the time of a conversation in furtherance of

2 the conspiracy or not present at the time of an incident  
3 which took place in connection with achieving the objects  
4 of the conspiracy, you cannot consider that testimony or  
5 conversation or event as bearing upon his membership in  
6 the conspiracy.

7           Whether he joined the conspiracy knowingly and  
8 willfully and with knowledge of at least some of its un-  
9 lawful objectives must be determined as to him solely on  
10 the basis of what he said or did or what took place in his  
11 presence and not on the basis of what somebody else did  
12 when he wasn't there and not participating. But, such  
13 testimony may be relied upon by the jury and considered in  
14 connection with the first element of Count 1 insofar as  
15 concerns the issue of whether or not a conspiracy existed  
16 as charged.

17           The jury in considering whether the chain of  
18 persons existed may consider all the evidence in the case.  
19 But in determining whether Larry Lombardi knowingly and  
20 willfully became a link in the chain may consider only the  
21 evidence pertaining to his own acts and conduct. The jury  
22 may consider that a person engaged as a participant or as  
23 a link in the chain in a large wholesale narcotics distri-  
24 bution business must recognize that there are other people  
25 involved in it and that he is playing a part in a broader

2 scheme or criminal enterprise.

3                   However, it is not necessary that the defendant  
4                   on trial before you know all the details of a conspiracy  
5                   or even that he be acquainted with all of the other members,  
6                   so long as he knew the basic general purpose of the con-  
7                   spiracy and acted intentionally and willfully in furtherance  
8                   of it so as to make it an **undertaking** which he desired  
9                   to succeed and to help it in its stated purpose, which is  
10                   alleged to have been the distribution of heroin from Hong  
11                   Kong to users in the United States.

12                   The third element of the conspiracy charged is  
13                   that it must appear to your satisfaction beyond a reasonable  
14                   doubt that at least one of the conspirators, it doesn't  
15                   have to be Mr. Lombardi, committed an overt act in the  
16                   Southern District of New York as listed in the indictment.

17                   I will read these overt acts in a moment. I  
18                   ask that you pay close attention to them. You will note  
19                   that some of these overt acts did not take place in the  
20                   Southern District of New York, which includes the borough  
21                   of Manhattan.

22                   In order to find that the third element has  
23                   been satisfied, you must find beyond a reasonable doubt  
24                   that one of the overt acts was committed within the Southern  
25                   District of New York. So long as any single overt act was

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2 committed in the Southern District of New York, it is not  
3 important that other actions may have taken place in Staten  
4 Island or in Washington, D.C. or in Hong Kong or elsewhere.

5 For our purposes here, you should know that  
6 Manhattan or New York County, as I said before, is one of  
7 the counties that comprise the Southern District of New  
8 York and that Staten Island is not in the Southern District  
9 of New York, it is in the Eastern District of New York.

10 It would be possible to commit an overt act  
11 by leaving Manhattan to go to Staten Island with the  
12 intention of accomplishing something in Staten Island in  
13 furtherance of the conspiracy, such as picking up a heroin  
14 pack with groceries, as I think is charged in one of those  
15 acts, and since part of that act was committed in Manhattan,  
16 it could be regarded as an overt act for these purposes.

17 I will now read the acts.

18 2) In the winter of 1970-71 a sailor entered  
19 the Golden Star Bar, 51 East Broadway, New York, New York,  
20 and spoke to defendant Lai Mong Wah.

21 3) In the winter of 1970-71, defendant Lai  
22 Mong Wah received approximately 3 pounds of heroin off a  
23 ship docked at Staten Island, New York.

24 4) In or about March 1971, co-conspirators  
25 Yuin Kwei Sang and Liu Yeh Han met in Room 1104 of the

2 Woodner Hotel, 3636 16th Street Northwest, Washington, D.C.

3 5) In or about March 1971 co-conspirators Liu  
4 Yeuh Han paid co-conspirator Yuin Kwei Sang \$15,000 in the  
5 vicinity of the Peking Restaurant, 5522 Connecticut Avenue,  
6 Northwest, Washington, D.C.

7 6) In or about March 1971, defendant Lai Mong  
8 Wah sent approximately \$10,000 from New York, New York to  
9 defendant Chang Yu Ching in Hong Kong, British Crown Colony.

10 7) In or about September 1971, a sailor  
11 delivered two coffee tables, each containing approximately  
12 2 1/2 pounds of heroin, to an apartment rented by defendant  
13 Lai Mong Wah at 133 East 4th Street, New York, New York.

14 8) In or about September 1971, defendant Cheu  
15 Kin Ping received approximately 8 ounces of heroin at  
16 80 First Avenue, New York, New York.

17 9) On or about September 29, 1971, co-conspir-  
18 ator Liu Yeuh Han gave another person \$2500 in the Peking  
19 Restaurant, 5522 Connecticut Avenue, Washington, D.C.

20 10) On or about September 1971, defendant  
21 Sammy Cho distributed approximately 15 pounds of heroin at  
22 274 Mott Street, New York, New York.

23 11) In or about September 1971, defendant  
24 Larry Lombardi at 95 East Broadway, New York, New York re-  
25 ceived approximately 2 kilograms of heroin and tested it

2 by boiling a sample of it contained in a test tube in  
3 mineral oil.

4 12) On several occasions in or about September  
5 1971, defendant Larry Lombardi received quantities of  
6 heroin contained in 5-ounce bags totaling approximately  
7 15 pounds of heroin.

8 13) In or about October 1971, defendant Sammy  
9 Cho transported approximately 20 pounds of heroin in a red  
10 Studebaker from 274 Mott Street to 133 East 4th Street, New  
11 York, New York.

12 14) On several occasions in or about October  
13 1971, defendant Larry Lombardi received quantities of heroin  
14 contained in 5-ounce bags totaling approximately 20 pounds  
15 of heroin.

16 15) In or about December 1971, defendant Larry  
17 Lombardi received approximately 1 pound of heroin at 95 East  
18 Broadway, New York, New York.

19 16) In or about November 1971, defendant Larry  
20 Lombardi and co-conspirator Americo Spagnuolo counted  
21 approximately \$30,000 at 95 East Broadway, New York, New  
22 York.

23 19) On or about December 22, 1971, defendant  
24 Lai Mong Wah negotiated approximately \$14,000 in personal  
25 money orders from the Hang Sing Bank, Hong Kong, British

2 Crown Colony.

3                   20) In or about January 1972, defendants Lai  
4 Mong Wah, Cheung Kin Ping and Sammy Cho met in the Ling Wah  
5 Restaurant, Hong Kong, British Crown Colony.

6                   22) On or about January 26, 1972, defendants  
7 Lai Mong Wah, Cheung Kin Ping and Sammy Cho met in the  
8 Hotel Singapore at 54 Kennedy Road, Hong Kong, British  
9 Crown Colony.

10                  26) On or about April 5, 1972, defendants  
11 Cheung Kin Ping and Sammy Cho possessed approximately 22  
12 pounds of heroin at Dodge Island Seaport, Miami, Florida.

13                  That's the end of the overt acts.

14                  An overt act is any step, action or conduct  
15 which is taken to achieve or further or accomplish the  
16 objective of the conspiracy.

17                  The purpose of requiring proof of an overt act  
18 is that people might conspire and agree together to violate  
19 the law, and after they reach that agreement they may change  
20 their minds. They may do nothing to carry it into effect.  
21 If that happens, if it was only talk, then no crime has  
22 been committed.

23                  An overt act is an essential element, and the  
24 commission of an overt act within this district by a member  
25 of the conspiracy in furtherance thereof is an essential

2 element to the crime of conspiracy which must be proved  
3 beyond a reasonable doubt.

4 An overt act need not be a criminal act nor  
5 need it be the crime which is the object of the conspiracy.  
6 It is not necessary to show that each member of the con-  
7 spiracy committed or participated in each act or any act  
8 or any particular act, since the act of anyone done in  
9 furtherance of the conspiracy will be sufficient to satisfy  
10 this element.

11 So much for Count 1.

12 If you are convinced beyond a reasonable doubt  
13 that the Government has proven all three of these essential  
14 elements of Count 1, then it is your duty to convict the  
15 defendant on that count.

16 However, if you are not satisfied beyond a  
17 reasonable doubt that the Government has proven all of those  
18 three elements, then you must return a verdict of not guilty  
19 on Count 1.

20 Now I will go to the substantive counts.

21 As I said to you earlier, while I am going to  
22 discuss them together because they all charge violation of  
23 the same statute, I must remind you that each count charges  
24 a separate crime and that you must keep the evidence as to  
25 each count separate and distinct in your mind, and you will

2 be asked to announce separate verdicts as to each count,  
3 wholly independent of what your conclusion may be on the  
4 other counts.

5 Now I will read the substantive counts to you.

6 Count 7. The grand jury further charges, in  
7 or about the month of September 1971 in the Southern District  
8 of New York, Lai Meng Wah, also known as Wah Je, also known  
9 as Gloria, also known as Big Sister, and Larry Lombardi,  
10 the defendants, unlawfully, intentionally and knowingly did  
11 possess with intent to distribute a Schedule 1 narcotic drug  
12 controlled substance, to wit, approximately 1 kilogram of  
13 heroin.

14 Count 9. The grand jury further charges, in  
15 or about the month of September 1971, in the Southern  
16 District of New York, Larry Lombardi, the defendant, un-  
17 lawfully, intentionally and knowingly did possess with  
18 intent to distribute a Schedule 1 narcotic drug controlled  
19 substance, to wit, approximately 2 kilograms of heroin.

20 Count 11. The grand jury further charges, in  
21 or about the month of October 1971, in the Southern District  
22 of New York, Larry Lombardi, the defendant, unlawfully,  
23 intentionally and knowingly did possess with intent to  
24 distribute a Schedule 1 narcotic drug controlled substance,  
25 to wit, approximately 2 kilograms of heroin.

2 Count 12. The grand jury further charges, in  
3 or about the month of October 1971 in the Southern District  
4 of New York, Larry Lombardi, the defendant, unlawfully,  
5 intentionally and knowingly did possess with intent to  
6 distribute a Schedule 1 narcotic drug controlled substance,  
7 to wit, approximately 2 kilograms of heroin.

14 Count 19. In or about the month of December  
15 1971, in the Southern District of New York, Larry Lombardi,  
16 the defendant, unlawfully, intentionally and knowingly did  
17 possess with intent to distribute a Schedule 1 narcotic  
18 drug controlled substance, to wit, approximately 1 pound of  
19 heroin.

20 In these counts the defendant is charged with  
21 violating Title 21, United States Code, Sections 841A1 and  
22 841B1A. You don't have to remember these numbers, but it  
23 is essential that you understand what this statute forbids.

2 distribute a controlled substance, and I instruct you that  
3 heroin is such a controlled substance and is on the Schedule 1  
4 referred to in the statute and is within the reach of the  
5 statute.

6 Before you can convict the defendant on any  
7 one of these substantive counts, you must be satisfied that  
8 the Government has proven each of the following three  
9 elements beyond a reasonable doubt as to that particular  
10 count you are then considering.

11 These are the three elements of the substantive  
12 counts, different from the conspiracy count which had three  
13 elements of its own.

14 First, that on or about the date set forth in  
15 that count in the indictment which you are then considering,  
16 the defendant possessed with intent to distribute a narcotic  
17 drug controlled substance, that is heroin.

18 Second, that he did so unlawfully, willfully  
19 and knowingly with the required specific criminal intent,  
20 and:

21 Third, that the substance which the defendant  
22 possessed with intent to distribute was, in fact, a  
23 Schedule 1 narcotic drug controlled substance, that is  
24 heroin.

25 I'd like to say a few further words to you on

2      each of these elements.

3               You note in describing the first element, I  
4      used the term "possessed with intent to distribute." What  
5      does that phrase mean? I will deal first with the word  
6      distribute.

7               The word distribute means the actual, construc-  
8      tive or attempted transfer of the drug.

9               There is no direct evidence that Lombardi  
10     actually distributed any narcotics. There is, however, some  
11     circumstantial evidence in the case bearing on his intent  
12     which the jury may consider in determining whether the drug  
13     was possessed with intent to distribute.

14               In that regard, the record appears to show that  
15     Lombardi lived modestly in an old tenement house on East  
16     Broadway, that he had a store in which items of small value  
17     were sold and that his life style would hardly suggest that  
18     he could pay such large amounts of money for heroin unless  
19     he was intending to resell it.

20               There is no indication that he himself was a  
21     user of heroin, and your common sense will tell you that  
22     users of heroin ordinarily do not buy such large quantities  
23     of almost pure heroin as was testified to by the witness  
24     Yuin in this case, so that in view of the situation of the  
25     defendant as appears in the evidence and the large quantity

2 and high purity of the alleged heroin, you may, but you  
3 need not, infer from those circumstances alone that the  
4 purpose of acquiring the heroin, if . . . did so, was to possess  
5 it with intent to distribute it to others.

6                   However, that's a factual question and it is  
7 a question for your sole determination because you decide  
8 all issues of fact in the case.

9                   I will now define for you the term "possession"  
10 as used in this trial.

11                   There are two kinds of possession, actual  
12 possession and constructive possession. A person who  
13 knowingly has direct physical control over a thing at a  
14 given time, has it in his hands or in his pockets, is in  
15 actual possession of it.

16                   A person who, although not in actual possession,  
17 knowingly has both the power and the intention to exercise  
18 dominion or control over a thing, either directly or through  
19 somebody else, is in constructive possession of it.

20                   Dominion and control includes a working relation-  
21 ship or sufficient association with those having actual  
22 custody so as to enable the person having had constructive  
23 possession to assure delivery or turning over of the  
24 articles to another as a matter of course.

25                   Possession may be sole or joint. If one person

2 alone has actual or constructive possession, possession  
3 is sole. If two or more persons share actual or constructive  
4 possession, it is joint.

5 You may find that the element of possession as  
6 that term is used in these instructions is present if you  
7 find beyond a reasonable doubt he had actual or constructive  
8 possession, either alone or jointly with others.

9 The second element requires that the Government  
10 prove beyond a reasonable doubt with regard to the particu-  
11 lar count which you are considering that the defendant  
12 acted unlawfully, willfully and knowingly.

13 These are important words. You heard me use  
14 the words knowingly and willfully in connection with my  
15 instructions to you regarding the conspiracy count. I will  
16 now discuss with you the meaning of those words. I ask you  
17 to treat my comments concerning the meaning of these words  
18 and bear them in mind in your deliberation as to all counts.

19 What do these words mean? Let's say first  
20 what they don't mean. They don't mean that the Government  
21 must show that a defendant knew he was breaking a particular  
22 law before he may be convicted of a crime. They don't mean  
23 that the Government has to show that the defendant intended  
24 to profit at the expense of any other person nor do they  
25 have anything to do with his personal or private reasons

2 for violating the statute, for if after considering all  
3 the evidence in accordance with my instructions to you, you  
4 come to the conclusion that the defendant violated the  
5 statute, then, in that event, his personal or private reasons  
6 for violating the statute are of no consequence so far as  
7 guilt is concerned.

8 I instruct you that these words knowingly and  
9 willfully mean deliberately and intentionally. In other  
10 words, you must be satisfied beyond a reasonable doubt that  
11 the defendant acted with knowledge, consciously, in the  
12 free exercise of his will. The words knowingly and will-  
13 fully are opposed to the idea of an inadvertent or accidental  
14 connotation.

15 An act is done knowingly if it is done volun-  
16 tarily and purposely, and not because of mistake, acts of  
17 negligence or some other innocent reason.

18 An act is done willfully if it is done knowingly  
19 and purposely and not because of mistake. An act is done  
20 willfully if it is done knowingly and deliberately.

21 As to the meaning of the word "unlawfully," I  
22 think I told you it is not necessary that he know that he  
23 was violating any particular statute. Rather it is  
24 sufficient if you are convinced beyond a reasonable doubt  
25 that he was aware of the general unlawful nature of his act.

2 Knowledge and intent exist in the mind. Members  
3 of the jury, you can't look into a man's mind and see  
4 what's going on. The only way you have for arriving at a  
5 decision on these matters is to take into consideration  
6 all the facts and circumstances shown by the evidence, in-  
7 cluding the exhibits, and to determine from all such facts  
8 and circumstances whether the requisite knowledge and  
9 intent were present at the time in question. Direct proof  
10 is unnecessary. Knowledge and intent can exist in the mind  
11 and can be inferred from all the surrounding circumstances.

12 As to the third element, the Government must  
13 prove beyond a reasonable doubt that the substance which  
14 was possessed with the intent to distribute, if there was  
15 one, was, in fact, heroin.

16 To meet its burden, the Government need not  
17 produce the chemist. Just as with any other component, the  
18 existence and nature of the narcotics may be proved either  
19 by direct or circumstantial evidence.

20 You may consider the fact that the testimony  
21 in the case is that the substance appeared to be a white  
22 powder, that the persons handling the powder dealt with it  
23 as if it were in fact heroin, that the persons who dealt  
24 with it dealt with it clandestinely and secretly and that  
25 substantial prices were paid for it.

2                    You will recall that with regard to the substance  
3      charged in Count 7, the witness Yulin testified that in his  
4      presence the defendant conducted a purity test and that the  
5      defendant was seemingly satisfied that the substance was  
6      in fact heroin and that he subsequently paid \$18,000 for it.  
7      You should, however, consider all of the surrounding cir-  
8      cumstances in determining whether the substance charged in  
9      each particular count was in fact heroin.

10                  In order to find that the third element has  
11      been satisfied as to the particular count that you are then  
12      considering, you must be convinced beyond a reasonable  
13      doubt that the substance was, in fact, heroin.

14                  If you are not so convinced, then you must re-  
15      turn a verdict of not guilty on the particular count which  
16      you are then considering.

17                  Just a few more words and then I will have  
18      concluded.

19                  Under your oath as jurors, you cannot allow  
20      any consideration of the punishment or possible sentence  
21      which might be inflicted upon the defendant if convicted  
22      to enter into your verdict in any way or in any sense to  
23      affect your deliberations. The duty of imposing sentence  
24      rests exclusively on the Court.

25                  Your function is to weigh the evidence in the

2 case and to determine whether or not the defendant has  
3 been proven guilty of any count beyond a reasonable doubt,  
4 and to do so solely on the basis of the evidence and the  
5 law. You are to decide the case upon the evidence and the  
6 evidence alone, and you must not be influenced by any  
7 assumption or conjecture or sympathy or any inference not  
8 warranted by the facts, unless proven to your satisfaction.

9 If you fail to find beyond a reasonable doubt  
10 that the law has been violated, you should not hesitate for  
11 any reason to find a verdict of acquittal, not guilty.

12 But, on the other hand, if you should find that  
13 the law has been violated as charged, you should not  
14 hesitate because of sympathy or any other reason to render  
15 a verdict of guilty as a clear warning that a crime of this  
16 character may not be committed with immunity. The public  
17 is entitled to be assured of this.

18 A word about deliberating.

19 Each juror is entitled to his or her own opinion.  
20 Each of you should exchange your views with fellow jurors.  
21 That's the purpose of jury deliberations, to discuss and  
22 consider the evidence and to listen to the arguments of the  
23 fellow jurors, and to present your individual views and to  
24 consult with one another to reach a verdict based solely  
25 and wholly on the evidence, if you can do so without

2       ence to your individual judgment.

3           Each one of you must decide the case for him-  
4       self or herself after discussion with your fellow jurors.  
5       You should not hesitate to change an opinion which you may  
6       hold which, after discussion, appears erroneous in the  
7       light of the discussion, review of the evidence and the law.

8           However, if after carefully weighing all the  
9       evidence and listening to the argument of your fellow jurors,  
10       entertain a conscientious view that differs from the  
11       others, you are not to give up your judgment simply because  
12       you are outvoted or outweighed. The final vote of each  
13       of you will reflect your individual conscientious judgment  
14       as to how the case should be decided.

15           In order to find a verdict on any count, the  
16       jury must be unanimous as to that count.

17           Perhaps during your deliberations you may  
18       desire to see some of the exhibits or all of them or you  
19       may want some portion of the testimony read to you, or you  
20       might find that you are uncertain as to the meaning of some  
21       part of the Court's instructions. If this occurs, you may  
22       send out a note to the Court through your foreman asking  
23       for whatever will clear up that question you may have.

24           In writing any such note, you will not state  
25       in the note how your vote may then be divided.

2                   Please, before you ask to have testimony read  
3 to you, exhaust your own collective recollection by dis-  
4 cussing it with each other first, because the total memory  
5 of twelve people is generally better than the memory of a  
6 single person and ordinarily after you discuss it, it will  
7 come back to you.

8                   But, if you do find that you really need to have  
9 something read to you, then send out a note and tell me  
10 specifically what it is that you want to hear. If you ask  
11 for a copy of the indictment by note, that will be sent in  
12 to you.

13                   As I said earlier to you, the indictment is  
14 merely a charge or an accusation. It has no status as  
15 evidence.

16                   Mrs. Tucker will be the foreman, and she will  
17 send out any communications by delivering a note to the  
18 marshal.

19                   If the jury has reached a verdict, simply tell  
20 the marshal, "The jury has reached a verdict."

21                   Let me state to you in closing, your oath  
22 covers your duty, and that is without fear or favor to any-  
23 one, you will well and truly try the issues between this  
24 defendant and the Government of the United States, based  
25 solely upon the evidence and the Court's instructions as

2 to the law. It is important to the defendant, it is  
3 important to the Government and it is important to you.

4 Please swear the marshals, Mr. Clerk.

5 (One marshal was duly sworn.)

6 (Two alternate jurors were excused.)

7 THE COURT: I ask the rest of you to remain  
8 seated briefly while I confer with the attorneys to see if  
9 there are any additional instructions I should mention to  
you.

11 Please don't discuss the case while you are  
12 sitting here in the box because there might be additional  
13 instructions which you haven't heard yet.

14 (In the robing room.)

15 THE COURT: Do you have any additional re-  
16 quests?

17 MR. ENGEL: No, your Honor.

18 THE COURT: Do you have any?

19 MR. JOY: Yes, your Honor.

20 I don't believe that your Honor charged, and  
21 I may be wrong in this, interest or lack of interest in the  
22 outcome of the case. I know you did it on bias or prejudice.

23 THE COURT: I mentioned the word interest in  
24 the outcome of the case.

25 MR. ENGEL: You did. I recall that.

2 THE COURT: I indeed did. I said that was  
3 a proper matter for their consideration.

4 MR. JOY: The other is I would like a request  
5 that if you agree with the theory advanced in summation,  
6 you may adopt it. If you don't, you are not required to.

7 THE COURT: What is it you are asking for?

8 MR. JOY: The instruction that if a theory  
9 advanced by one of the attorneys in summation agrees with  
10 your recollection and understanding, you may adopt it and  
11 its reasons as your own.

12 THE COURT: I decline to so charge.

13 MR. JOY: The other is an exception to your  
14 Honor's instruction about Mr. Lombardi living modestly and  
15 that having some bearing on whether he took this heroin.

16 THE COURT: The intent to distribute rather  
17 than use it?

18 You can have an exception as to that. I think  
19 I made clear that it was for them to decide.

20 Anything else?

21 MR. JOY: No, your Honor.

22 (In open court.)

23 THE COURT: Members of the jury, you may with-  
24 draw and commence your deliberations in the custody of the  
25 marshal. Please do so.

2

AFTERNOON SESSION

D

3

1:40 p.m.

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(n open court - jury not present.)

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THE COURT: You may proceed, Mr. Engel.

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MR. ENGEL: I have examined cursorily Court's Exhibit 1, and I simply have not had time to make a thorough review of it.

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However, what I will do is turn Court's Exhibit 1 over to the defense, they may view it, and I will leave it as Court's Exhibit 1 and not give it a 3500 number.

THE COURT: I think that is a reasonable thing to do.

MR. ENGEL: One other thing came to my attention over the luncheon hour that I want to bring to the attention of the court.

I asked the witness Yuin, because something

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occurred to me this morning while we were in court, whether he kept a diary of any sort, and he said he did, and he showed it to me.

It's in Chinese. I don't know what it concerns except that it records meetings from time to time with me and with Mr. Taylor. The government's position is that that diary is not 3500 material because it's not in the

2 possession of the government. But in any event, I bring  
3 it to the court's attention.

4 THE COURT: Is it in the possession of the  
5 government?

6 MR. ENGEL: It's in Mr. Yuin's possession, your  
7 Honor. I viewed it at my desk over the luncheon break.

8 THE COURT: If it should contain Brady material,  
9 God help you. That's the problem with it. You now know  
10 the diary exists, and it's in Chinese, and it could say  
11 most anything.

12 MR. ENGEL: I suppose it could say most anything,  
13 your Honor. I still believe that insofar as I know there  
14 is no Brady material in it because I don't know what's in  
15 it, and, secondly, it's not 3500 material, I believe, be-  
16 cause it's not in my possession. I just found it out over  
17 lunch and I bring it to your attention because I think I  
18 am bound to.

19 THE COURT: I suppose you are. All right.

20 What period does the diary cover?

21 MR. ENGEL: January 1, 1975 to the present.

22 THE COURT: It couldn't be Brady material, could  
23 it?

24 MR. SLEPIAN: Except that there may be various  
25 representations that we would be able to use for impeachment

2 purposes that may have been written by Mr. Yulin as to  
3 recollections or conversations that he had with Mr. Taylor  
4 relative --

5 THE COURT: Is there anything more Mr. Taylor  
6 could have told him that hasn't been brought out? He didn't  
7 put him in the government pension plan yet.

8 MR. SLEPIAN: I think more than that, sir,  
9 seriously, I think that the witness certainly is as vague  
10 as he can be when it's helpful for his position to be so,  
11 and as clear as can be when it's harmful to the defense  
12 position.

13 These various written documents he may have in  
14 his possession may show that his vagueness is not as vague  
15 as it would be, that there may be --

16 THE COURT: It wouldn't show that, because he  
17 is not referring to his diary while he is testifying. He  
18 is testifying under difficult working conditions. He  
19 speaks some English. Some of the interpretation may vary  
20 from what he thinks he hears in English. I think we had  
21 best resolve this in a practical fashion, that the diary  
22 be made available but not to be taken out of the U.S.  
23 Attorney's office, and either or both of the interpreters  
24 look at it, and if there is anything that might pass for  
25 Brady material I'll recall him later in the trial and let

2 you bring it out.

3 I am inclined to agree it's not 3500 material.

4 MR. SLEPIAN: If the diary is not a telephone  
5 book in terms of volume it seems to me if the book were  
6 given to us now it won't take more than a cursory in-  
7 spection on our part to see the sum and substance of it.8 THE COURT: That's admissible optimism. Any  
9 objection to that?10 MR. ENGEL: I think it's more voluminous than  
11 Mr. Slepian's conjecture would suggest. I think if they  
12 want to ask him a question, and he gives a vague answer  
13 about dates, they can certainly ask him to refresh his  
14 recollection from the diary.15 MR. SLEPIAN: At this posture the defense re-  
16 quest on behalf of Lai Mong Wah would be tough access to  
17 the diary to view it with our interpreter in relation to  
18 any material that may be helpful to us in relation to  
19 various transactions, promises, alleged inferences, or  
20 whatever may have gone on between the witness and/or any  
21 government agency.22 MR. ENGEL: How could an inference go on between  
23 a witness and the government?24 MR. SLEPIAN: Innuendo, or his interpretation  
25 of what "we will help you" would mean.

2                   THE COURT: I don't want to argue the point.  
3                   It might possibly be Brady material. As I observed many  
4                   times we seem to be more interested in Brady compliance  
5                   than we are with the ultimate issue in a case. It's too  
6                   bad we didn't listen to Justice Cardozo when he was alive,  
7                   but we didn't, and this is our mode of procedure. We  
8                   will do almost anything to avoid resolving a case on the  
9                   merits.

10                  So to avoid any problem, my suggestion is that  
11                  it be marked for identification. You can look at it. You  
12                  can have your interpreter look at it. But I will not hold  
13                  up this trial which is already proceeding much too slowly.  
14                  Get it out and mark it.

15                  MR. ENGEL: Yes, your Honor.

16                  MR. SLEPIAN: Cardozo also said that danger  
17                  invites rescue.

18                  (Continued on next page.)

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2 propensity for flight and perhaps also because they wanted  
3 to keep him in a good frame of mind so he would continue  
4 to cooperate and tell all that he knows about his partici-  
5 pation in the heroin traffic.

6 MR. ROSENTHAL: I think your Honor has the order  
7 of things in reverse.

8 THE COURT: I will put them in any order you want,  
9 Mr. Rosenthal. That is part of the facts of life, that  
10 they have these informers or accomplices, and they do every-  
11 thing with them except put them in the federal retirement  
12 system.

13 MR. ROSENTHAL: I won't be surprised if they get  
14 around to that.

15 THE COURT: I suppose they will.

16 All right, I will take the proof.

17 Is there anything else we can attend to while  
18 the jury is out of the room?

19 MR. ENGEL: No, I don't think so. I really  
20 only have about three or four more questions.

21 THE COURT: You have marked that diary, and I  
22 am going to have the witness stay on hand until such  
23 time as they have had a chance to have Mrs. Moy look at  
24 the diary. However, it's my wish that the diary not be  
25 taken from the court house.

2 We will be in recess for a few more minutes.

3 (Recess.)

4 (In open court - jury present.)

5 THE COURT: Go ahead, Mr. Engel.

6 BY MR. ENGEL:

7 Q There was a question pending, I believe.

8 THE COURT: Yes. Read the question, if you can  
9 find it.

10 (Question read.)

11 A I remember. I would like to request that my  
12 diary not be read by anybody.

13 THE COURT: We will discuss that later. For  
14 the present the diary can be laid aside. Return the  
15 diary to Mr. Engel.

16 Q What happened?

17 A My family came from Hong Kong.

18 Q That is, your wife?

19 A That's correct.

20 Q Had she been threatened prior to her coming over  
21 to the U.S.?

22 MR. ROSENTHAL: Objected to, if the court  
23 pleases, and I ask the jury be instructed to disregard  
24 it.

25 THE COURT: I will give a special instruction

2                    THE COURT: We'll take a brief recess at this  
3                    time, members of the jury.

4                    Will you please withdraw to the jury room. The  
5                    witness may withdraw.

6                    (The jury left the courtroom.)

7                    MR. SLEPIAN: In the interest of following the  
8                    court's directive about having Mr. Yulin made available,  
9                    I did not pursue something that I already would have wished  
10                   to have gone into as a result of having the first page of  
11                   the hard cover portion of the witness' diary translated  
12                   for me into English by our interpreter.

13                   THE COURT: I am not precluding you from doing  
14                   that.

15                   Please tell me, how far did Mrs. Moy go in the  
16                   diary.

17                   MR. SLEPIAN: One page of the hard cover.

18                   THE COURT: Is there more than one diary?

19                   MR. SLEPIAN: There is a very small --

20                   THE COURT: Please hand them to the clerk.

21                   MR. SLEPIAN: Sure.

22                   THE COURT: I want to resolve this matter of the  
23                   diary.

24                   MR. SLEPIAN: I do see information already. I  
25                   would just like to go into from the first page --

2 THE COURT: Well, what you already have, of course,  
3 you may use.

4 MR. SLEPIAN: Well, I thought it would be more  
5 intelligent for me not to even start at this time and have  
6 him brought back when I can have the full diary made avail-  
7 able to me by my interpreter having translated for me in  
8 the interest of following the court's directive.

9 THE COURT: I thought that what you intended to  
10 do was to use the diary as a lead to cross examination of the  
11 present witness; is that what you are telling me?

12 MR. SLEPIAN: I don't know what else the diary  
13 contains as yet.

14 THE COURT: But what you have read already.

15 MR. SLEPIAN: I have information to cross examine  
16 Mr. Yuin from what I have read; nothing at this point to  
17 cross examine the instant witness.

18 THE COURT: It occurs to me about the diary --  
19 do you want to be heard?

20 MR. ENGEL: Yes, your Honor's decision to have  
21 them look at it during the examination of Yuin was some-  
22 thing I didn't quarrel with when the jury came back, but  
23 I would make this application: That that diary be held by  
24 the government, that we review it for any possible Brady  
25 aspects and then submit anything that we think is Brady

2                   to the defendants and anything we think is questionable  
3                   to your Honor. That's the proper procedure.

4                   THE COURT: I may haveto do that. Because two  
5                   problems arise out of this thing. Of course, this man  
6                   Yuin is so dumb he is smart --

7                   MR. SLEPIAN: Well, I don't know --

8                   THE COURT: Let me finish, please. You will  
9                   have your chance to make your observations on the record.

10                  He may be concerned about this diary for several  
11                  reasons -- one of them is it might contain incriminatory  
12                  matter which will either affect him adversarilly in Hong  
13                  Kong or the State of New York. I assume he doesn't fear  
14                  federal prosecution, although apparently he doesn't have  
15                  actual immunity.

16                  That's one thing.

17                  The other thing is, it may contain data which,  
18                  i.. the hands of others, bearing in mind that the witness  
19                  Yuin at least is an admitted heroin dealer, and he says  
20                  his wife has been threatened and if hehad transactions  
21                  with others, perhaps. There may be material in this diary  
22                  which the witness has a legitimate fear might get into the  
23                  hands of those people that he doesn't trust. It seems to  
24                  me also that he lacks the basis for standing to make a  
25                  Fifth Amendemnt claim about it. I might make that claim

2 if he understood it thoroughly.

3 I believe Mr. Engel has the right approach,  
4 that the government should be required to translate both  
5 of these diaries for any Brady material and any Brady  
6 material to be given to you and I will recall Mr. Yulin  
7 for cross examination after that is done and, as I believe  
8 Mr. Engel has already suggested, anything that he regards  
9 as questionable, he ought to place under the court's  
10 in camera inspection.

11 But I don't think, under the circumstances, the  
12 way they developed here, that it's within my rights to go  
13 handing out this diary to the defendant's interpreter  
14 against his wishes. One would ordinarily think that a  
15 cooperating witness who would give something to the govern-  
16 ment in this country would know that it might appear in  
17 tomorrow's New York newspapers but I am not sure he under-  
18 stood his rights in the matter and if need be I would look  
19 into it further with him on the record but I don't think  
20 that's necessary.

21 MR. SLEPIAN: Your Honor, certainly in terms of  
22 what the United States Attorney thinks of Brady material,  
23 just in translating the first page, there is conversation  
24 in here between the witness and Jack Taylor and what this  
25 witness believes Jack Taylor to have told to him relative

2 to his wife's getting permanent status here. I don't know  
3 what the United States Attorney's position might be in  
4 terms of whether that is Brady material or not.

5 THE COURT: It has already been developed, has  
6 it not, that the United States through Taylor at least  
7 has promised to do whatever they can to help him and his  
8 family to stay here.

9 MR. SLEPIAN: There is more. The witness' hopes  
10 that things will work out that way are different from what  
11 he said in the diary, about Jack Taylor saying there will  
12 be no problem and things of that sort.

13 THE COURT: Is Jack Taylor going to testify here?

14 MR. ENGEL: This afternoon if we ever get to  
15 him.

16 MR. SLEPIAN: In the small portion of the second  
17 diary, if we may call it that, the little one, the court  
18 will see a large amount of writing in English in this, to  
19 begin with, with some words that are highly sophisticated  
20 words as well as mere monosyllabic words and just for  
21 the impression alone that the witness gave that he needs  
22 a dictionary to merely translate three letters of very  
23 brief composite nature that is in evidence already, from  
24 the substance alone it would be interesting for the jury  
25 to see the sophistication of --

2 THE COURT: It's purely cumulative on that score  
3 and I won't permit that.

4 MR. SLEPIAN: I haven't been able to go into the  
5 substance of it, your Honor.

6 MR. ENGEL: Perhaps he copied it. It's nonsense.

7 MR. SLEPIAN: I would object to the statement  
8 that whatever I just said is something that may be non-  
9 sense. Just read the writing and there is a large amount  
10 of English in there that is sophisticated.

11 THE COURT: Counsel is not trying to offend  
12 anyone. My directions with respect to Government's  
13 Exhibit 3545 and 3546 are that the government have them  
14 translated as fast as possible and comply fully with the  
15 Brady rule with respect thereto.

16 However, I will also rule that this defendant  
17 is entitled to the security and privacy of his diary and  
18 he does not have to have it in the hands of these defen-  
19 dants or their interpreters under the circumstances of  
20 this case, absent a voluntary waiver of his rights.

21 MR. SLEPIAN: I would object, your Honor, to --

22 THE COURT: All right.

23 I think I might say one more thing about this  
24 point. If a further interview with him, Mr. Engel, estab-  
25 lishes that there is no real reason why they can't look

2        at it and no genuine information on his part of no problem  
3        over his actual rights to the privacy of his own papers,  
4        then for Heaven's sake let him look at it.

5                    MR. ENGEL: I am certainly not going to assert  
6        any frivolous privilege.

7                    THE COURT: I don't suggest you are, Mr. Engel.

8                    (Recess.)

9                    (Continued on next page.)

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2 THE COURT: I keep preaching and it doesn't  
3 do any good around here. Here we are all tied up with  
4 this lengthy trial, an experienced attorney is standing  
5 here and he didn't know you had these goods on his  
6 client. He didn't know it, and he wasn't able to confer  
7 with his client with regard to it, and he wasn't able to  
8 seek to apply his judgment to that fact. It's rather  
9 discouraging to this court.

10 MR. SLEPIAN: May we use this moment while the  
11 jury is out.

12 In relation to those diaries I would request  
13 what has been happening so far --

14 (Continued on next page.)

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2 THE COURT: You want a progress report on the  
3 diaries?

4 MR. SLEPIAN: Because the diaries are lengthy  
5 in terms of the Chinese characteristics which represent,  
6 of course, a large number of words, and I would wish to  
7 know if there is any expectation as to when we could have  
8 this in order to start preparing for impeachment value,  
9 of which I already know from the first page that I have  
10 questions to ask.

11 THE COURT: Mr. Engel has undertaken to use his  
12 best efforts and Mrs. Ho's best efforts. I suppose a  
13 progress report might be helpful at this time.

14 MR. ENGEL: I wish I could give a sunny progress  
15 report, your Honor. I conferred at length with Mrs. Ho  
16 and Mr. Yuin at the close of business yesterday. It was  
17 agreed by both of them that if that were undertaken to  
18 be translated it would take a couple of weeks.

19 I then was thinking, well, we could parse  
20 it all out to different interpreters, have a person take  
21 this, and another person that.

22 THE COURT: They were perfectly happy when  
23 they had it in their hands, and then your client demanded  
24 it back, and I was concerned that Yuin does have some  
25 Fourth and Fifth Amendment rights still left to him, and

1 2 mdmch

2 maybe his life might be in danger as a result of criminals  
3 in Hong Kong, who might want to do him in because of what  
4 they read in the Chinese newspaper, and I was concerned.

5 If I had known it was going to be such a  
6 manifold problem, I would have simply left it in Mrs.  
7 Moy's hands where it was yesterday.

8 MR. SLEPIAN: It didn't seem to be that much  
9 of a problem. Mrs. Moy was able to do one page for me  
10 in about two minutes.

11 The entire book is not full, the hard-cover  
12 book. I would estimate it to be about half a hard-cover  
13 book.

14 As far as the short little soft-cover volume,  
15 some of it is in sophisticated English, which I certainly  
16 can read, and --

17 MR. ENGEL: That isn't part of the diary, in  
18 any event.

19 MR. SLEPIAN: I don't know who wrote that.  
20 I don't know whose handwriting that is yet. It is  
21 purported to be his diary.

22 THE COURT: Some of the handwriting is not his.  
23 Some of it is names, phone numbers and addresses of people  
24 he has known and seen.

25 MR. SLEPIAN: There are statements in English

1 3 mdmch

2 about protection act, about DEA agents and other things.

3 THE COURT: I think any evidence as to his  
4 English ability is purely cumulative.

5 MR. SLEPIAN: The point is my interpreter  
6 here apparently wouldn't need two weeks, wouldn't need  
7 two days, to go through this entire diary with counsel.

8 We were making excellent progress here  
9 very speedily.

10 THE COURT: Do you think with Mr. Yuin's help  
11 you could do it quicker than that?

12 MR. ENGEL: Your Honor, I then asked Mr. Yuin,  
13 what does this diary contain in it anyway?

14 THE COURT: It contains a fine, self-serving  
15 statement of all the cooperating he has done and the  
16 rewards he is to receive from it. I think that is apparent  
17 from the English.

18 I find my own name in it in English.

19 MR. ENGEL: I think your name is in it.

20 At least the following is also in it:

21 The weather on any given day, his records of his corres-  
22 pondence with his daughter in Shanghai, certainly his  
23 meetings with me, with Mr. Taylor, and his own attorney,  
24 so there are obviously privileged matters in there as  
25 well.

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2 In other words, it is a diary.

3 THE COURT: Does it all amount to a row of pins?

4 MR. ENGEL: I think it probably does amount  
5 to a row of pins, your Honor, but here's what I have done.  
6 This is the decision I reached about 6:00 o'clock  
7 yesterday, and I hope it meets with the Court's approval.

8 I directed Mr. Yuin to go home and spend  
9 the entire day today and go through and pin or pick out  
10 every passage that deals in any way with his relationship  
11 with the Government, or with his testimony in this case.

12 THE COURT: I would rather he do the opposite,  
13 that he pick out any paragraph that he considers privileged  
14 under any grounds imaginable and anything that he considers  
15 involves danger to his family or himself, that he wouldn't  
16 want them to have.

17 My hope would really be he would say to them,  
18 "Go on, take it," because he has cast his lot with the  
19 Government, for better or for worse, and whatever risk  
20 he has taken by doing that he has already taken, and I  
21 don't think as a practical matter the diary should add to  
22 the peril in which he finds himself.

23 MR. ENGEL: He doesn't feel that way, your  
24 Honor. He feels, and I think understandably, that certain  
25 of these matters, his thoughts, his relationship with his

2 daughter, and so forth, are private things. He doesn't  
3 want them to be aired.

4 THE COURT: Suppose he would pinpoint the  
5 private things and Mrs. Ho translated only those, and you  
6 would release to the defendants the Xerox copy of the  
7 trivial things?

8 MR. ENGEL: I am trying to figure out how  
9 we can do this and do it within the context of the trial,  
10 your Honor.

11 What I then suggested was that Mrs. Ho then  
12 go and review with him these matters which deal with  
13 his relationship to the Government, and anything he said  
14 in his testimony. Then she would translate those matters  
15 for me.

16 THE COURT: The difficulty with that is, you  
17 see, that these defendants -- and I can't find fault with  
18 their position in this regard -- place <sup>you</sup> in the  
19 posture of a totally untrustworthy and untruthful person.

20 MR. ENGEL: Of course, your Honor.

21 THE COURT: That is the strategy and position  
22 they have the right to adopt and must adopt, so they  
23 aren't going to permit someone whose veracity they don't  
24 trust to cull out Brady material. They will permit the  
25 U.S. Attorney to do so. They have to permit the U.S.

1 6 mdmch

2 Attorney under the cases to do so and they hope he  
3 blunders because when it does come to light, as it  
4 eventually does, that gives them a new trial, as we have  
5 seen from many rather fantastic cases.

6 So my suggestion to you is you approach it  
7 from the other way around, that you have Mr. Yuin cull  
8 those portions of the diary which he regards as privileged,  
9 give them a Xerox of the parts he doesn't care about,  
10 and that which he regards as privileged and declines  
11 to turn over. Mrs. Ho should --

12 MR. ENGEL: Review with me.

13 THE COURT: That's right. And then you  
14 will be able to make a representation to the Court as  
15 to the portions not turned out you personally have  
16 screened it for Brady material, not relied on Mr. Yuin  
17 to do so.

18 MR. ENGEL: There was another aspect of my  
19 plan. I think your plan is perhaps equally able to be  
20 turned out, and I will just try -- I will try my darnedest.  
21 I will do it on Saturday, which I figure, then have it  
22 available --

23 THE COURT: I was hoping this case would be  
24 finished this week.

25 MR. ENGEL: So was it, but I don't foresee that.

1 7 mdmch

2 MR. SLEPIAN: Do I understand that under this  
3 plan now the witness George Yuin has care, custody, possession  
4 and control of those two diaries right now?

5 THE COURT: That is my understanding.

6 MR. SLEPIAN: I respectfully move for a  
7 mistrial.

8 THE COURT: Motion denied.

9 MR. SLEPIAN: May I finish?

10 These two diaries were given 3500 numbers  
11 yesterday. They were taken away from counsel who was  
12 having the interpreter read them, and now one hook, one  
13 circlicue, any line of those hieroglyphics can distort  
14 entirely their meaning, and to allow the witness to have  
15 back those diaries in his possession to do with as he  
16 sees fit was unconscionable.

17 I thought it was under the exclusive control  
18 of Mr. Engel.

19 THE COURT: You made your motion and I denied  
20 it. Your record is protected.

21 There are exigencies that have to be met in  
22 this case and I try to meet them the best I can.

23 MR. SLEPIAN: I ask a direction they be taken  
24 away immediately from Mr. Yuin, before he can further make  
25 alterations, changes, or take any other action which would  
in any way affect the contents of the documents.

2 THE COURT: I would suggest, Mr. Engel, that  
3 Mrs. Ho ought to be present while this work is being done.

4 MR. SLEPIAN: Apparently that has not been the  
5 case already and there may be irreparable damage already  
6 because all he has to do is take a pen and change on little  
7 hieroglyphic and we have not only a new word for you but  
8 a new paragraph.

9 THE COURT: Maybe we should have a will for  
10 Howard Hughes.

11 MR. SLEPIAN: Let us remember that this person  
12 was a high school teacher of Chinese literature.

13 THE COURT: But, you know, it's the ink and the  
14 age of the paper.

15 MR. SLEPIAN: Am I to go to expert testimony?  
16 I am shocked that this was taken out of Mr. Engel's  
17 possession after we were directed to return it to him,  
18 and that this man has had it all night long and all day  
19 today, wherever he is.

20 THE COURT: All right. The record will show  
21 you are shocked.

22 MR. ROSENTHAL: I join in it.

23 THE COURT: You are shocked, too?

24 MR. ROSENTHAL: I am not shocked about anything  
25 that occurs in these courtrooms.

2                   THE COURT: All right. You are not shocked but  
3                   your motion is denied also.

4                   MR. ROSENTHAL: I join in the application.

5                   THE COURT: All right. Please bring the jury  
6                   back in.

7                   (The jury entered the courtroom.)

8                   THE COURT: I am going to receive the exhibits  
9                   in evidence but they are not to be shown to the jury until  
10                  enlargements and legible blowups have been made of any  
11                  of the pages which Mr. Rosenthal has difficulty reading or  
12                  which he believes a reasonable person would have diffi-  
13                  culty in reading.

14                  MR. ENGEL: That's fine.

XXX 15                  (Government's Exhibits 50 through 54 received  
16                  in evidence.)

17                  THE COURT: Do you use this microfilm for cus-  
18                  tomers who request their bills?

19                  THE WITNESS: Yes, your Honor.

20                  THE COURT: They have no trouble with legibility  
21                  on it?

22                  THE WITNESS: No.

23                  THE COURT: You think a normal person can read  
24                  these things?

25                  THE WITNESS: Well, we try to get the best possible

2 shock him, so please don't be shocked.

3 MR. ROSENTHAL: He is younger than me.

4 MR. SLEPIAN: But not wiser.

5 THE COURT: I will be in recess.

6 MR. SLEPIAN: Before you go into recess, and  
7 in order that I might try and speak with the clerk of the  
8 court for Justice Rothwax, does the Court apprise me I  
9 have until 10:45 to be back here?

10 THE COURT: I was waiting for Mr. Cloidt to  
11 go see whether it's practical or not.

12 Why don't you try Judge Rothwax and see if  
13 he will see you at 4:15? If he won't see you at 4:15,  
14 then I will let you see him in the morning.

15 I will leave it between you and Mr. Justice  
16 Rothwax, but get back to us as promptly as you can.

17 Is there any current status report about the  
18 diary?

19 MR. ENGEL: The witness spoke to his lawyer  
20 yesterday and I spoke with the lawyer. He was very  
21 surprised, and Mr. Leftkort expressed concern on behalf of  
22 his client, and I said I would talk to Mr. Leftkort at  
23 lunch. I spoke with him earlier to-day and explained what  
24 the Court had ordered, and I think, although I am not sure,  
25 that the witness is going to go ahead and pick out those

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2 passages that he does not want to be disclosed.

3 In any event, he is coming to my office at  
4 4:30 this afternoon and I will see him then.

5 THE COURT: Fine. Just keep us adequately  
6 informed.

7 MR. SLEPIAN: The question is whether he  
8 picked out these passages with an interpreter who explained  
9 to Mr. Engel what the passages are that he wanted to keep  
10 out.

11 THE COURT: Mr. Yulin can read Chinese.

12 MR. SLEPIAN: Mr. Engel can't. I don't believe  
13 we have reached a point where the witness is determining  
14 what is Brady material.

15 THE COURT: No. The procedure I had in mind  
16 and I thought I made this adequately clear, the proceeding  
17 I had in mind was to have the witness designate that which  
18 he doesn't want your people to see. I had begun with  
19 the idea you could see it all. I assume the problem does  
20 not involve the entire diary and he is to set out that  
21 which he does not want disclosed.

22 Mr. Engel will then translate that and the  
23 translation, if necessary, will be reviewed by the Court  
24 in camera, and if I find it is Brady material I will direct  
25 that which I find to be Brady material to be disclosed

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2 if I believe I ought to do that, and if I don't so find  
3 I will seal the transcript -- the translation, rather, and  
4 your rights will be protected.

5 I think I have done all that could be expected  
6 to be done with respect to this diary. It's just a  
7 question of getting it attended to.

8 MR. SLEPIAN: There is a standing objection  
9 to the constant possession of that diary in Mr. Yuin's  
10 possession for tampering.

11 THE COURT: I thought we agreed yesterday it  
12 would be possessed by him in the presence of the interpreter  
13 or the United States Attorney.

14 MR. ENGEL: Your Honor, I am in court all day,  
15 Mrs. Ho is in court all day, and we can't sit over the  
16 witness' shoulder. There is no evidence, and I object  
17 to Mr. Slepian's constant slurs with respect to this  
18 witness tampering, and I don't think we should presume  
19 he is going to tamper with it. I don't think there is  
20 any indication of it at all.

21 THE COURT: I don't presume so, and I would like  
22 to avoid any problems. I think it's impossible to tamper  
23 with it at this stage. The principal diary is a bound book  
24 and the purpose for which this man kept the diary, as  
25 I understand it, was to make certain that he was adequately

1 19 rkmch

2 protected if his own dealings with the Federal Government  
3 did not eventuate to his complete satisfaction. He wants  
4 to be able to make a claim, a claim in the nature of a  
5 2255 proceeding or a claim under the Federal Government  
6 Claims Act, or some other kind of a claim, and he wants  
7 to have a record of his dealings with Taylor and other  
8 people. It's a bound book.

9 MR. SLEPIAN: He may be concerned that various  
10 testimony he gave is in opposition to various statements  
11 he made in that diary, and he may be concerned about some  
12 perjurious statements. I don't know what he is concerned  
13 with.

14 All I know is I continue to object --

15 THE COURT: If he was concerned with those  
16 things, there wouldn't be much point in giving it to the  
17 prosecutor.

18 MR. SLEPIAN: I have no question of Mr. Engel's  
19 integrity. I wanted him to keep these diaries.

20 THE COURT: When you can, Mr. Engel, this  
21 afternoon, you ought to avoid controversy, if possible,  
22 by making some effort to insure either that there is  
23 a continued, or preserved chain of custody of the documents  
24 or the Xerox of them. It seems to me it can be done.  
25 See what you can do to resolve it. You don't

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2 want to hear about this any more.

3 MR. ENGEL: I certainly don't. There comes  
4 a limit as to how much I can do.

5 THE COURT: I understand that.

6 (Luncheon recess)

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2 (In open court; jury not present)

3 MR. SLEPIAN: Various portions of the diary  
4 thus far have been handed over to me and I have some of it  
5 being interpreted at the present time.

6 THE COURT: Would you mark for the record what  
7 has been turned over?

8 MR. ENGEL: I did want to do that.

9 THE COURT: When did you receive them, Mr.  
10 Slepian?

11 MR. SLEPIAN: My interpreter received it this  
12 morning.

13 MR. ENGEL: I wanted to put it on the record  
14 but the jury was here earlier.

15 Mr. Yuin had delivered to me portions of what  
16 was marked as 3545 for identification and 3546 for  
17 identification.

18 What has been supplied to me deals with Mr.  
19 Yuin's relationship with the Government.

20 However, there is more material that will be  
21 supplied. Mr. Yuin is coming to my office this  
22 afternoon and will meet with Mrs. Ho. She will review  
23 it, I will review it.

24 THE COURT: Mark what you gave already.

25 MR. ENGEL: These matters I have given over

2 to Mr. Slepian should be marked 3546A and 3545A for  
3 identification.

4 THE COURT: Give Mr. Rosenthal the same thing.

5 MR. ENGEL: I can't give Mr. Rosenthal the  
6 same thing, the resason being that they can't be  
7 duplicated. They just don't come out, so they will just  
8 have to share them and Mrs. Moy --

9 THE COURT: You mean there is something  
10 Xeroxed that can't be produced?

11 MR. ENGEL: I tried on Saturday.

12 MR. SLEPIAN: In relation to the small diary  
13 that has portions of it that has been given to me, there  
14 were extensive portions of it in English.

15 THE COURT: I understand that. I saw it  
16 myself.

17 MR. SLEPIAN: I haven't gotten it, though.  
18 Why I couldn't get the ones in English that refer to the  
19 Witness Protection Act and other things that Mr. Yuin  
20 believes are benefits that were accrued to him, I don't  
21 see why I can't get that.

22 THE COURT: By the end of today, we are going  
23 to know the answer, aren't we, Mr. Engel?

24 MR. ENGEL: Yes.

25 THE COURT: Please bring the jury back and get

3 THE COURT: Read United States v. Kahn.

4 You have to practically have a gun at a fellow's head to  
5 have duress around here.

6 MR. SLEPIAN: I had a caes last year with  
7 Judge Weinfeld on a duress defense and I will look through  
8 that.

9 THE COURT: Duress is like entrapment. It's  
10 an interesting theory. It's worth trying.

11 MR. ENGEL: Your Honor, I prevailed upon the  
12 witness Yuin yesterday to surrender the rest of his diaries  
13 without deleting anything more, and the only --

14 THE COURT: Anything more than what?

15 MR. ENGEL: Certain portions have already  
16 been turned over to the defense counsel, and now I am  
17 turning over the remainder to the defense.

18 THE COURT: So they have it all?

19 MR. ENGEL: Exactly.

20 I hope this is agreeable to the defense. I  
21 haven't had a chance to confer with them. The witness  
22 asked me this material be given to the interpreter, that  
23 the interpreter be permitted to translate it, and it  
24 not be given the defendants.

25 Now, if the lawyers --

2 THE COURT: I can't make a direction like  
3 that, but I can direct that it not be copied, and that  
4 anything the attorneys receive be surrendered to the  
5 Government at the close of the trial as soon as the proof  
6 is closed.

7 MR. F GEL: I wonder if this would be satis-  
8 factory to defense counsel. If they have -- he just  
9 doesn't want it read by the defendants. The interpreter  
10 or their lawyers can discuss it with them, its contents  
11 with them. He just doesn't want it to be read.

12 Is that agreeable to you people?

13 MR. ROSENTHAL: I have no objection to that.

14 MR. SLEPIAN: I have no objection.

15 Obviously, after this is translated to me, I  
16 may have a question or two to ask my client relative to  
17 its contents.

18 MR. ENGEL: No problem with that.

19 MR. SLEPIAN: May I ask Mr. Engel now, is  
20 he stating that these diaries now entail the total diaries  
21 that we initially had in court, or are there portions  
22 that have been taken out of this now?

23 MR. ENGEL: There have been portions taken  
24 out and that's been previously supplied to the defense.

25 MR. SLEPIAN: Other than we have been previously

supplied, has anything been taken out of those diaries?

MR. ENGEL: Not to my knowledge.

MR. SLEPIAN: Because my interpreter tells me from what she has read the continuity does not flow.

THE COURT: When you have it all --

MR. SLEPIAN: Pages have been taken out of what we have received, and I don't know if they match.

THE COURT: When you have it all, you can determine whether the continuity exists.

As I understand it, one of the diaries was a bound volume, so it ought to be readily ascertained whether anything has been taken out of it.

MR. ENGEL: That's right, your Honor.

Let's just mark these again, because the portions that I gave you yesterday were previously marked.

THE COURT: Can't you give him a single piece?

MR. ENGEL: Your Honor, they were marked as 3546, and then the portions I handed over yesterday were marked 3545A and 3546A. I would like the portions I am handing over today to be marked 3545B and 3546B.

THE COURT: And you now represent they have it all?

MR. ENGEL: That's right.

(Government's Exhibits Nos. 3545B and 3546B

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2 It seems to me the only purpose of this could  
3 only be cumulative or inflammatory in some sense.

4 THE COURT: I don't know what is inflammatory  
5 about it. I will have to say to you that sitting here,  
6 listening to these exhibit numbers, I can't tell which  
7 signatures are signed by Gloria and which Gloria signatures  
8 are signed by Cheung or Yuin.

9 I think in this day and age, when people don't  
10 tend to believe, it's permissible to let the expert show  
11 his blowups and show how he drew his inference, and what  
12 the signature was on. I don't think there is anything  
13 inflammatory about that.

14 MR. ENGEL: Your Honor, that is really why  
15 I am calling this person, just to make it clear who wrote  
16 what, and so that it's clear to the jury.

17 THE COURT: I don't know if you can make it  
18 clear. It isn't clear so far.

19 MR. ENGEL: That's why I wanted to continue,  
20 your Honor.

21 THE COURT: I will take the proof. Set up  
22 the equipment.

23 MR. SLEPIAN: I have examined certain portions  
24 of the diary turned over to me. I think the Court will  
25 recall itself in the small diary seeing the words

2 Witness Protection Act or WPA and various statements  
3 about that written in English by Mr. Yuin.

4 The diary which I have now received, purporting  
5 to be the entire diary, is devoid of that page or pages  
6 which I have looked at, and which I believe the Court will  
7 recall as well.

8 THE COURT: You are talking about the little  
9 book or the big book?

10 MR. SLEPIAN: The little book with all the  
11 handwriting in English about WPA. I have been given  
12 what is purported to be the entire diary. Those pages  
13 relating to WPA are not in the diary at all now, which was  
14 my fear, and which I stated when the books were given back  
15 to the witness himself.

16 If Mr. Engel or the Court or myself would wish  
17 to enter into a stipulation that these diaries have  
18 pages that have been taken out, though they were purported  
19 not to have been tampered with, then perhaps we can  
20 obviate having Mr. Yuin back here.

21 THE COURT: He has to come back anyway to tell  
22 about his signature.

23 I would like to know what pages, if any, have  
24 been removed.

25 MR. SLEPIAN: If the Court will take a look at

2 the diary, it will refresh even the Court's recollection  
3 of having seen the word WPA, and it is not in there.

4 It's the spiral pad where pages can be torn  
5 out.

6 THE COURT: I will discuss that with you at  
7 the end of the day.

8 What about the phone numbers? Are you going  
9 to leave those in the air?

10 MR. ENGEL: That will be the subject of a  
11 stipulation.

12 THE COURT: Are you ready, Mr. McNally?

13 THE WITNESS: Yes, your Honor.

14 THE COURT: Bring in the jury, please.

15 (Jury present)

16 THE COURT: Have all the slides been marked  
17 for identification?

18 MR. ENGEL: No.

19 THE WITNESS: I have them marked in my own  
20 manner.

21 THE COURT: I would like them marked in some  
22 manner that doesn't interfere with their being projected.

23 Before anything is exhibited to the jury,  
24 I would like to have the record show an identification  
25 number for the slide.

20                   MR. SLEPIAN: Before we leave I have the standing  
21                   problem which I still will request mistrials for on the  
22                   basis of the handwriting portion which I think the court  
23                   will corroborate WPA and various lines next to it, and  
24                   the court will see while this was purported to be the  
25                   entire looseleaf diary no where are there in those pages

2 of English of Mr. Yuin's feelings about the WPA or reloca-  
3 tion, they are just gone, although they were purported to  
4 now be in my possession. They are not there.

5 THE COURT: I am unable to speak from personal  
6 memory about the looseleaf one. I saw some English addresses  
7 in there. I did note that.

8 MR. SLEPIAN: I think I crossed Mr. Taylor about  
9 the WPA, your Honor, based upon the fact of the one-minute  
10 glimpse I was able to have of the small diary, asking him  
11 why he discussed relocated with Mr. Yuin.

12 I did not get that information from anywhere --

13 THE COURT: Here's a page right here I see in  
14 English the words witness protection program. It's under  
15 616. The year isn't quite clear to me.

16 MR. SLEPIAN: There was a whole page of hand-  
17 writing, and that's a spiral notebook, and I would like  
18 Mr. Engel to inquire of Mr. Yuin whether or not he has  
19 taken any pages out of that spiral notebook since I don't  
20 see the page that I was looking at in the first place.

21 MR. ENGEL: Your Honor, I would like to,  
22 if I may, put this matter in I believe the context in  
23 which it should be viewed.

24 THE COURT: Before you do that, and I welcome  
25 your doing that, let me just throw a thought out here.

2 I would give consideration to having this man  
3 back here under oath in the absence of the jury and ask him  
4 whether he removed any pages from this thing, if that  
5 will be of any assistance.

6 It hasn't been told to me yet whether they have  
7 found anything in here which suggests that his cross  
8 examination ought to be reopened. If that is so, then  
9 it probably should be done before the government rests.

10 MR. SLEPIAN: I think he should certainly be on  
11 call for tomorrow morning. Our interpreter has consented  
12 to stay up a good part of the night in relation to both  
13 of these diaries. The court will rememb<sup>r</sup> we didn't get  
14 them all until this morning to begin with. She is going  
15 to go through them for us tonight and glean various facts  
16 if it turns out that cross examination is warranted.

17 Certainly in relation to an in camera question-  
18 ing of the witness relative to removing portions of the  
19 spiral notebook, should that be answered in the affirma-  
20 tive, then I would certainly want that question then asked  
21 in front of the jury to show this person has taken portions  
22 of this diary out while the U.S. Attorney had them in  
23 his possession --

24 THE COURT: If the answer is in the affirmative  
25 he should be examined in front of the jury, no question

2 about it.

3 MR. SLEPIAN: It's dangerous to talk to Mr.  
4 Yulin, your Honor, especially in front of the jury. You  
5 never know.6 THE COURT: I don't know whether I am required  
7 to respond to that or not. He struck me as much better  
8 than the average cooperating witness.9 MR. SLEPIAN: That's my point. He is very intel-  
10 ligent.

11 THE COURT: I thought he was basically truthful.

12 MR. ROSENTHAL: They are not necessarily synony-  
13 mous.14 MR. ENGEL: Your Honor, I would like to make it  
15 clear that my view of these diaries is that the court and  
16 counsel are faced with sort of a difficult position.17 I don't believe your Honor ever held these  
18 matters were something the government ought to turn over  
19 to the defense, but the idea was if there were some-  
20 thing in there that were Brady material, that is, some-  
21 thing where the witness did show you lied about his feelings  
22 or his reactions to certain events --23 THE COURT: Or if he smoked a marijuana cigarette  
24 like in the Seijo case.

25 MR. ENGEL: Yes. Then counsel would be able to

2 inquire about those allegedly Brady-type matters.

3                   So I think that Mr. Yuin obviously was very,  
4 very reluctant to part with these, and I can understand  
5 that, but I think there has to be some showing by the  
6 defense that there is such Brady material, that there  
7 is something which is exculpatory of their clients, or  
8 there is something that Mr. Yuin did --

9                   THE COURT: If he destroyed something -- that's  
10 their contention, that he ripped out pages and destroyed  
11 it, and if that be so that's something which could be  
12 argued against his general credibility. That's about  
13 as much as I could say about it.

14                   MR. ENGEL: Your Honor, of course there the  
15 reasons for whatever was removed --

16                   THE COURT: He may be able to explain it. You  
17 might not like the explanation. Because it may well be  
18 that there is somebody in Hong Kong of whom he is afraid.

19                   MR. SLEPIAN: Not in the English portions I  
20 read relative to the WPA. It's just not there any more.  
21 Maybe there were representations by Mr. Taylor because  
22 I see Jack's name in it.

23                   THE COURT: There is one page about WPA. I  
24 read it to you.

25                   MR. SLEPIAN: There was a whole page written in

2 but the full longhand.

3 THE COURT: In English?

4 MR. SLEPIAN: Yes, only in English. I couldn't  
5 read Chinese, so I don't know what he did -- I know continuity  
6 is disturbed as my interpreter has indicated to me.

7 MR. ENGEL: That is disturbed because the initial  
8 decision that Mr. Yuin were to cull out some pages and hand  
9 them over. Then I decided last weekend when I saw him really  
10 the only way to do this would be to have their interpreter  
11 go through it. He objected to that, and for personal  
12 reasons, and I said, well, if just the interpreter looks  
13 at it and reads it will that be sufficient. He said, yes.

14 Then he did not object. Then the interpreter  
15 of course relayed that to counsel, and counsel and the  
16 defendants and the interpreter talked about it.

17 THE COURT: I will have to let them work further  
18 with it. If it's necessary to ask him under oath in the  
19 absence of the jury whether he ripped any pages of the  
20 spiral notebook I will probably let you do that.

21 MR. ROSENTHAL: Judge, I am still awaiting the  
22 decision of Mr. Engel on the stipulation that I submitted to  
23 him earlier today. So far it's been a one-way street as  
24 far as stipulations are concerned.

25 THE COURT: That's this one here.

4 THE COURT: They have been admitted. They are  
5 in the record and have been duly marked.

6 I stand corrected. He is in the process of  
7 marking them.

8 Anything further?

9 MR. ENGEL: No.

10 MR. ROSENTHAL: Mr. Engel and I have agreed  
11 on a stipulation I would tell the jury. Mr. Engel and I  
12 have agreed on two items.

13 THE COURT: I would like to see counsel and  
14 the court reporter inside.

15 MR. SLEPIAN: We also have an in camera  
16 situation with George Yuin, at my request, that various  
17 pages have been removed from the spiral notebook.

18 MR. ENGEL: I spoke with Mr. Yuin last night  
19 and he says no pages were removed, and I have no reason  
20 to think otherwise.

21 THE COURT: I have no basis to form a conclusion,  
22 one way or the other. It's been suggested to me by Mr.  
23 Slepian that I had observed something in English there.  
24 I would really have to say I don't have any recollection  
25 one way or the other.

2 MR. SLEPIAN: I would believe the transcript  
3 indicated your Honor stated he saw reference to WPA in  
4 writing.

5 THE COURT: I saw it in the hardbound, and I  
6 think I saw it yesterday in the softbound segments which  
7 I had.

8 I would like to make another suggestion to  
9 you. The softbound or spiral notebook, if you want to call  
10 it that, the pages of dates, and I would ask you before  
11 you make a lot of extravagant statements on the record,  
12 any of you, that you sit down and lay out these pages  
13 and see if they are not self-authenticating as to  
14 dates, and you defense attorneys should certainly do that,  
15 because I am going to permit you to examine Yuin in the  
16 absence of the jury to ask him did he destroy any pages  
17 from this diary between the time that he first handed it  
18 to the Government and he gave it back -- rather, the  
19 Government gave it back to him.

20 Assuming he answers that the same way that he  
21 answered before, that he answered Mr. Engel outside of  
22 court and not under oath, but assuming he gives the  
23 same testimony as his answers to Mr. Engel, you will be  
24 at a blind wall unless you have intrinsic evidence of the  
25 book when you can tell him that April 1st is missing.

2 MR. SLEPTAN: I can't do that.

3 MR. ENGEL: Mr. Yulin made that suggestion to me  
4 yesterday afternoon.

5 MR. SLEPIAN: I would like to have the English  
6 portion, three or four of these pages in English, intro-  
7 duced not necessarily for the purpose of their truthful-  
8 ness but rather indicating his handwriting.

9 THE COURT: I won't require Mr. Engel to do that,  
10 but you may do so when your turn comes.

11 MR. SLEPIAN: I would just then ask to have it  
12 marked as a defendant's exhibit in front of the jury, that  
13 we just take --

14 THE COURT: When you opportunity to take evidence  
15 arises after he rests, sure, you can do that. Mr. Engel  
16 isn't going to dispute the authenticity.

17 Please step inside, gentlemen.

18 (In the robing room.)

19 THE COURT: I must report to the attorneys that  
20 this morning a juror entered into a conversation with the  
21 minute clerk, and told the minute clerk that her brother  
22 or a relative, the clerk did not make a note of the exact  
23 relationship because he was somewhat astonished at the  
24 statement -- her brother or a relative is a guard employed  
25 downstairs by the Federal Protection Service.

CERTIFICATE OF SERVICE

December 3, 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Jonathan Gilbermann